A DHARMA READER

CLASSICAL INDIAN LAW

TRANSLATED AND EDITED BY PATRICK OLIVELLE

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Historical Sourcebooks in Classical Indian Thought

HISTORICAL SOURCEBOOKS IN CLASSICAL INDIAN THOUGHT

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A Dharma Reader

CLASSICAL INDIAN LAW

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Preface

This series *Historical Sourcebooks in Classical Indian Thought* is the brainchild of Sheldon Pollock. These are sourcebooks like no other, because, unlike the common sourcebooks that attempt to give the flavor of a particular textual or religious tradition by citing text fragments, these aim at telling the story of the intellectual and theoretical engagement of classical Indian scholars with issues and problems within a particular system of knowledge, as well as their interaction and debates with each other. At the outset, therefore, I want to thank Shelly for inviting me to participate in this exciting project. I have learned so much from looking at the long textual history of the science of dharma (*dharmastra*) spanning over a millennium and a half with simply one question in mind. Rarely does one get the opportunity to scan this entire landscape with a focused lens, in my case focused on the epistemology of law and legal procedure.

Over the past six years or so during which I have been engaged in this project at varying degrees of intensity, there have been many friends and colleagues who have shared their knowledge and expertise. These include, but are not limited to, Ashok Aklujkar, Joel Brereton, George Cardona, Madhav Deshpande, Oliver Freiberger, Dominic Goodall, Ludo Rocher, and Albrecht Wezler. I want to thank in a special way Don Davis and Dominik Wujastyk for reading through my entire manuscript and providing valuable feedback. Leslie Kriesel of Columbia University Press copy-edited my manuscript with a sharp eye, catching every infelicitous phrase or idiom. She is the best editor I have had, and I want to thank her for her diligence. The University of Texas provided a publication subsidy for this volume. To them all, a heartfelt “Thank you!”

At a personal level, I want to thank my wife, Suman, who has always been a partner in my various publication projects, and to the growing family of my daughter, Meera, and her husband, Mark, and, of course, in a special way, to my grandchildren, Keya, Maya, and Max.

Patrick Olivelle
Austin, Texas

Abbreviations

Apa	Apararka’s commmentary on the *YDh*
pDh	*pastamba Dharmastra*
pG	*pastamba Ghyastra*
pr	*pastamba rautastra*
A	*Kauilya’s Arthastra*
G	*valyana Ghyastra*
r	*valyana rautastra*
AV	*Atharva Veda*
BDh	*Baudhyana Dharmastra*
BG	*Baudhyana Ghastra*
Bhrr	*Bhradvja rautastra*
BhaviP	*Bhaviya(t) Pura*
BhG	*Bhagavad Gt*
BraaP	*Brahma Pura*
BSm	*Bhaspati Smti*
BYogYSm	*Bhad-Yogi-Yjñavalkya Smti*
ChUp	*Chndogya Upaniad*
DhKo	*Dharmakoa*
EDS	*An Encyclopaedic Dictionary of Sanskrit on Historical Principles.* Vols. 1–9. Pune, India: Sanskrit Dictionary Project, Deccan College, 1976–2011.
GDh	*Gautama Dharmastra*
Kane	P.V. Kane 1962–1975
KhG	*Khaka Ghyastra*
KtSm	*Ktyyana Smti*
Ktr	*Ktyyana rautastra*
Lr	*Lyyana rautastra*
MBh	*Mahbhrata*
MDh	*Mnava Dharmastra*
Medh	*Medhtithi*
MKo	*Mms Koa*
Mit	*Vijñnevara, Mitkar* commentary on the *YDh*
MNP	*padeva, Mms-Nyya-Praka*
MS	*Maitryaya Sahit*
NSm	*Nrada Smti*
NSm M	*Nrada Smti, Mtk* section
Panini	*Adhyy* of Panini
PrG	*Praskara Ghyastra*
PrM	Madhava, *Prara Mdhavya*
PrSm	*Prara Smti*
PMS	Jaimini, *Prva-Mms-Stra*
V	*gveda Sahit*
aBr	*avia Brhmaa*
B	*atapatha Brhmaa*
SmC	Devanna Bhatta, *Smticandrik*

rKo	*rauta Koa*
T	*Taittirya rayaka*
TB	*Tya Brhmaa*
TB	*Taittirya Brhmaa*
TS	*Taittirya Sahit*
TU	*Taittirya Upaniad*
VaDh	*Vasiha Dharmastra*
VarG	*Varha Ghyastra*
VarP	*Varha Pura*
Varr	*Varha rautastra*
VeS	Badarayana, *Vednta Stra*
ViDh	*Viu Dharmastra*
ViP	*Viu Pura*
VS	*Vjesaneyi Sahit*
VyaC	*Vacaspati Misra, Vyavahracintmai*
YDh	*Yjñavalkya Dharmastra*

Introduction

Linguistic and cultural translations are always fraught with misunderstandings and misinterpretations; much is lost in translation. The two terms at the heart of this exploration of classical Indian thought—law and *dharma*—make translation even more difficult. The English word “law” is a term about whose definition, extent, and application much has been written with little agreement. Its translation into an appropriate Sanskrit term therefore becomes doubly complicated. The Sanskrit word *dharma* has perhaps the most extensive semantic range of any term in the Sanskrit vocabulary; its very centrality within Indian culture, religion, and philosophy prompted thinkers to take it in a myriad different directions. Most modern scholars of ancient India confess to its untranslatability. Yet, large areas of its semantic compass, especially those relating to rules of morality, ritual, religious life, civil and criminal law, and norms of social interaction, intersect with what is commonly understood as law in contemporary societies and academic discourse.

This sourcebook does not simply survey the ways Indian thinkers have grappled with issues relating to dharma in its multiple meanings during a period of over a millennium and a half; it is not a semantic and cultural history of that term.[1] Neither does it seek to present the history of law, taken in its narrow sense of criminal and civil law or in its broad sense of rules governing social, ethical, and religious behavior, in India.[2] It is rather an exploration of the ways Indian thinkers down the centuries have wrestled with fundamental issues pertaining to law in a geographically vast, multiethnic and pluralistic society with multiple polities and a multiplicity of customs, rules, norms, and laws that governed the lives of individuals as parts of larger groups—be they family, lineage, caste, professional or religious association, village, or region—and the lives of these groups as they interacted with each other in the wider society.

First, what terms did they use to identify these norms of varying degrees of authority, range, and power operating at different levels of society? Did they arrive at an abstract concept of “law” beneath and beyond the specific manifestations in particular rules of limited scope? How did they theorize law? Second, how did they resolve the inevitable conflicts between different kinds of rules? What rule should one follow, for example, when a village law is in conflict with a caste rule, or a norm of morality with a commercial contract? Third, and most centrally, what is the epistemology of these various rules and laws? How do we come to recognize law? And how do we know whether any given source of law is legitimate? Are laws simply learned from observation and custom or are they codified in written texts? If they are so codified, what is their relationship to unwritten but equally authoritative laws handed down by tradition? Are all the sources of law ultimately religious—that is, founded on a transcendent and suprahistorical source of knowledge? Or are they contingent, dependent on time and place? Finally, how do people resolve disputes and deal with

those who violate accepted and established laws? What are the judicial apparatus and procedures that permit communities to ensure that justice is done, that verdicts are fair, and that the guilty are appropriately punished?

H.L.A. Hart's[3] magisterial, controversial, and justly famous book on jurisprudence and philosophy of law, *The Concept of Law,* proposes a significant and basic classification of law into primary and secondary rules. Primary rules are the norms that govern individual and group activities, of the "Thou shalt not steal" variety. This is easy to understand, and it is to this variety that most people apply the term "law." More significant for the philosophy of law, however, is Hart's concept of secondary rules, which encompass rules of recognition, change, and adjudication. The theory of secondary rules, especially the rule of recognition, has been subject to criticism. This is not the place to enter into that debate, but I think the basic premise underlying Hart's theory is not only sound but, as Shapiro (2009: 1) has shown, incontrovertible:

> For as Hart painstakingly showed, we cannot account for the way in which we talk and think about law—that is, as an institution which persists over time despite turnover of officials, imposes duties and confers powers, enjoys supremacy over other kinds of practices, resolves doubts and disagreements about what is to be done in a community and so on—without supposing that it is at bottom regulated by what he called the secondary rules of recognition, change and adjudication.

The secondary rules, as Hart (2012: 94) puts it, are all *about* primary rules:

> While primary rules are concerned with the actions that individuals must or must not do, these secondary rules are concerned with the primary rules themselves. They specify the ways in which the primary rules may be conclusively ascertained, introduced, eliminated, varied, and the fact of their violation conclusively determined.

The rules of recognition, simply put, provide both ordinary citizens and state officials, especially judges, the criteria for identifying what is a valid law and what is not. Rules of change identify the legitimate ways existing laws can be modified and annulled and new laws can be enacted. Rules of adjudication provide criteria for determining whether a primary rule has been violated, identify individuals who are competent to adjudicate, confer judicial powers on them, and provide legal procedures to be followed in adjudicating cases in a court of law.

This sourcebook is limited to the Hartian "secondary rules." The first part focuses on the rules of recognition, that is, the epistemology of law/dharma. How does an individual recognize a valid law/dharma, or identify and repudiate an invalid one? In modern nation-states with legislatures empowered to enact laws and with official records that catalogue those laws, the rules of recognition may not be too complicated. For his native England, Hart gives the pithy rule: "The queen in parliament" as the criterion for a valid law. For traditional India, where law as dharma is often viewed as not humanly created but founded on a transcendent source, and various kinds of law pertaining to different regions, villages, and corporate, religious, and ancestral groups are recognized, the rules of recognition become enormously complex and convoluted. In modern nation-states, rules of change also are clearer, because the legislature has the power not only to enact new laws but also to change or abrogate existing laws. For traditional India, where no law-making body such as a legislative branch of government is recognized, the legal and theoretical issues are more complex. If law is based on a transcendent and suprahistorical source, such as the Veda, then how can it account for the multiplicity and variety of laws observed on the ground? And how can

one enact new laws or change or abrogate existing ones? Whatever the theoretical and theological problems, laws have to and do change. We will explore the strategies the legal philosophers employed to understand and explain the variety of observed laws and to account for and facilitate change in laws.

The second part of this sourcebook deals with what Hart calls “the rules of adjudication.” In modern nation-states, laws setting up the judiciary and conferring power on judges are enacted by legislatures or constitutions. In traditional India, along with executive power, judicial power was, for the most part, also concentrated in the person of the king. Given the complexity of administering law in a relatively large territory, de facto adjudication of lawsuits was carried out by a professional judiciary with an established court system. The rules that governed the system were not viewed as dependent on the will or caprice of the king. Rather, they were also considered to be universally applicable across kingdoms and territories. How then are we to account for these rules? What is their epistemology?

These then are the questions, and the ways the legal scholars of ancient India grappled with them, that will occupy this sourcebook. Law and dharma will be put into dialogue, not because dharma is law as such, but because for much of the period under discussion it was under the category of dharma that, for the most part, discussions of issues pertaining to law took place. In other words, the modern category of law gives us the theoretical tools to ask the right questions and theorize the Indian intellectual labors on these issues, while dharma provides the major, although not the only, indigenous category within which those labors were carried out.

LAW AND THE TRADITION OF POLITICAL SCIENCE

The use of the term dharma for law, nevertheless, was neither universal nor inevitable. This is borne out by the first century C.E. author Kautilya’s compendium *Treatise on Politics* (*Arthastra*). The significance of Kautilya’s work for the history of law in India rests primarily on the fact that it provides a different and in many respects unique lens into that history. His treatise belongs to a distinct scholarly tradition with social and political priorities different from those represented by the science of dharma (*dharmastra*), the primary discipline devoted to jurisprudential reflection within the Brahmanical scholastic tradition. Kautilya makes no attempt to reduce the variety of laws within society into the single category of dharma. Indeed, we do not find a single comprehensive term within the *Treatise on Politics* to refer to law as such, or even to the broad areas of religious and secular norms covered by the term dharma within the discourse of the science of dharma. What is clear, however, is that Kautilya, both formally and in *obiter dicta,* argues for the plurality of law; law is not one but multiple. Although his text is later than the earliest documents of the science of dharma, it nevertheless taps into an alternate intellectual history that probably ran parallel to the one represented by the science of dharma. The *Treatise on Politics* was a product of an expert tradition based within royal chanceries and dealing with political science, theory of governance, and jurisprudence. Although much of this intellectual labor was carried out by Brahmans working as counselors, ministers, and government officials, their outlook and priorities were significantly different from those of their colleagues working within the confines of Vedic institutions of learning—the kind of Brahman intellectual that produced the texts of the science of dharma.

In this sourcebook we will examine documents from both these scholarly traditions dealing with law in ancient India. Unfortunately, Kautilya’s *Treatise on Politics* is the sole representative of political science; it is therefore both unique and precious. Other texts produced in later centuries are derivative and, although they provide interesting historical insights, are not included here. The material on governance and law contained in Kautilya’s work was incorporated into treatises of the science of dharma at least from the time of Manu (second century C.E.), a factor that may have

contributed to the demise of political science as a distinct and independent intellectual tradition. It is also likely that polities emerging after the Gupta Empire around the sixth century C.E.[4] did not consider this scholarly tradition as contributing significantly to governance or to enhancing the power of rulers; political science as a distinct intellectual enterprise was not fostered in the chancery or among the senior political elite. Thus it lacked an institutional vehicle for its survival. By contrast, the science of dharma flourished in a variety of institutional settings, especially in Brahmanical institutions devoted to the cultivation of Vedic and ancillary knowledge systems.

Although Kautilya does not present a theoretical framework for understanding either law as such or the operation of law within society, he provides insights into how different genres of law were perceived within the royal chancery, how they interacted with each other in a hierarchical system, and how conflicts among different kinds of law were resolved, as well as a unique and significant vocabulary for the different genres of law.[5]

The most important reference to this multiplicity of laws is found in the seventh chapter of Book 2. As part of the core of Book 2 ("Activities of Superintendents"), which probably existed as a separate text prior to its incorporation by Kautilya into his own work,[6] this chapter was already present in the sources he used and dates probably to the first century B.C.E. The chapter deals with accounts and bookkeeping carried out in the Bureau of Official Records, called *Akapaala*, where a registry was kept of various activities relating directly or indirectly to state revenue. One entry relates to various laws and customary norms prevalent in different parts of the kingdom (see ch. 3, #1): "In that bureau he should have the following entered in the registry books: concerning regions, villages, castes, families, and associations— dharmas, conventions, customs, and canons" (*A* 2.7.2).[7] The four kinds of law are distributed among two geographical divisions: regions and villages; two groups based on kinship: castes[8] and families or lineages; and finally *sagha,* a term that covers any kind of association or confederation, both political and economic. I think here the term probably comprehends different kinds of commercial, trade, professional, and even religious associations.[9] In all these geographical and social divisions and groupings within a kingdom there exists a variety of laws and regulations that govern social interaction and the lives of individuals. Kautilya reduces this multiplicity to four categories.

These categories are named dharma, convention, custom, and canon.[10] What are their exact meanings? How are they related to one another, and what happens when they are in conflict? Kautilya, unfortunately, does not provide much information on either issue; he appears to assume that his readers are familiar with these concepts and that no further elucidation is necessary. From the bits and pieces of evidence available within his treatise, however, we can tentatively arrive at a few conclusions. The category of dharma refers to the broadest level of normative behavior, and it is especially connected with righteousness, virtue, and morality. Thus, we hear of dharmic and adharmic customs (*A* 13.5.14, 24) and of dharmic rates of interest (*A* 3.11.1–3). It is also possible that this category included ritual practices that followed the traditions of particular families or regions. In any case, this kind of law appears to have been the one least connected with state revenue, even though officials needed to know such laws in order to properly administer a region. Thus, at 2.7.3 the dharma category is dropped when the bureau sends a written directive to each department regarding revenue expectations.

The next two, convention and custom, are closely related to each other, and their exact distinction is not altogether clear. The first probably refers to conventions that governed social and especially commercial interactions broadly conceived, while the second refers to the specific rules and regulations regarding commercial and other transactions in a particular locality. Thus, at *Arthastra* 2.16.24–25 we have reference to the customs in ports; here the term refers clearly to the duties and other charges levied by port cities on boats and merchandise making use of their facilities. Law as "custom" was, therefore, more specifically connected to commerce. Thus, in numerous places "custom" is used alone, without "convention," in contexts that deal with state revenue.[11]

The last member of the fourfold division, canon, was probably the most specific and limited; it comprehended bylaws and statutes established in a particular location either by the local authorities or by the king himself as orders or edicts (*A* 3.1.39).

A fifth term, procedures,[12] is often associated with convention, custom, and canon, and it referred to the rules and regulations that governed the activities of government officials. It is significant that in several places (*A* 2.6.14; 2.7.3, 9–10) "convention" is replaced by "procedure." This shows that, even if the two terms are not identical, there was a large degree of semantic overlap between them. Together with canon, procedure was also closely associated with the generation of state revenue. Thus, at *A* 2.6.14, these two are singled out in arriving at an estimated total of revenue due from a department: "Canons, procedures, setting out the corpus of revenue, receipts, aggregate of all revenues, and grand total—these constitute the estimated revenue." The three terms—custom, canon, and procedure—are connected to estimated revenues from government departments at *A* 2.7.3: "From that bureau he should deliver in writing to all departments the records of their estimated revenue, established revenue, outstanding revenue, income and expenditure, balance, additional revenue, procedures, customs, and canons." Yet in a broader sense, as we see from the statements in *A* 2.7.2 and 2.7.26–29, all these terms representing areas of law are significant for state revenue, and in the latter passage, for investigations of malfeasance by revenue officers. These passages are given in full with notes in chapter 3.1.

With regard to the relationship among these four areas of law, we do not find any direct statements in the older sections of the treatise that go back to Kautilya or his sources. However, the four seem to be arranged in a descending order of generality and an ascending order of specificity; the ones listed later are more specific and concern a more limited area of applicability. This is confirmed by a verse in the third book of the *Treatise on Politics:* "Dharma, convention, custom, and royal decree: these are the four feet of the subject of a legal dispute; each succeeding one countermands each preceding one" (*A* 3.1.39).

This verse, I think, accurately depicts the relationship of the four domains of law to one another. The ones listed later are more specific and thus have greater force that those listed earlier, following the general maxim of Indian hermeneutics that exceptions and specific rules have greater force and supersede generic rules.[13]

Now, it is nice, although not very fruitful, to speculate as to "what might have been": what the history of Indian law would look like if one of these terms had been adopted as the general term for law in Indian jurisprudence. The most promising candidate would have been "convention," that is, the Sanskrit term *vyavahra.* As we will see, it did have a distinguished history in Indian jurisprudential history, not as a term for law but for either a legal transaction or a lawsuit or legal procedure followed in a court of law. With the ascendency of intellectuals of the science of dharma, however, the term that came to dominate jurisprudential discourse was dharma.

The linguistic history of law reflects the two theoretical traditions of Vedic exegesis and political science. The former, fostered in conservative Brahmanical institutions of learning, came to dominance especially in the science of dharma, while the latter gradually disappeared or was integrated into the discourse of the science of dharma. The influence of Vedic exegesis on the theoretical reflection of Brahmanical jurisprudence accounts both for the centrality accorded to the concept of dharma and for the epistemology of law based on a transcendental source, in this case the Vedas.

THE SEMANTIC HISTORY OF DHARMA

The term dharma was co-opted early in the literature of the science of dharma as an umbrella concept to gather all the customs, practices, rules, conventions, rights, obligations, contracts, laws,

and the like, as well as ritual rules and religious and ethical norms, that guided and governed the lives of individuals and groups within society. This co-option was facilitated by the history of the term and concept of dharma pre-dating the emergence of the science of dharma, first within the early Vedic theological vocabulary and then in extra-Vedic vocabularies, including early Buddhist literature and the imperial ideology of the third century B.C.E. emperor Asoka, preserved in the corpus of his inscriptions. This is the history I want to delineate here.[14]

The history of the term begins with the oldest literary corpus of India, the *Rig Veda*.[15] The earliest stratum of that corpus goes back probably to the middle of the second millennium B.C.E., while the latest is from about the beginning of the first millennium B.C.E. The earliest form of the word, *dhárman,* is grammatically neuter; the masculine *dharma,* which is the normal form in later Sanskrit, already occurs four times in the *Rig Veda*. The two forms of the term together occur sixty-seven times in that text. Although this is not an insubstantial number, as Brereton (2009: 27) points out, the word's relatively modest frequency "implies that it was not a central term in the gvedic lexicon or in the Indian culture of the gvedic period." It also has no direct Indo-European and Iranian equivalent. Thus, the term was coined possibly as a neologism by the Vedic poets at a very early period, because it is attested in hymns from every chronological stratum.

Brereton takes the basic meaning of dharma in the *Rig Veda* to be "foundation": foundation of the world, gods, humans, human society, ritual, and the moral and legal order. Its early association with the gods Varuna and Mitra, and more generally with the group of gods called Adityas to which these two belong, becomes significant for its later semantic history because "the dityas are kings, and the connection between royalty and *dhárman* is a constant in verses describing the *dhárman* of the dityas" (Brereton 2009: 56). Brereton (2009: 55) further notes: "For the most part, when it is linked to Mitra and Varua, *dhárman* carries the sense of a foundational authority. The reason for this rests not so much in the semantic resonance that *dhárman* independently possesses, but rather in the character of the dityas. These are the gods most closely associated with the principles that govern the actions of humans. Varua is the god of commandments and Mitra is the god of alliances. The distinct characters of these gods then give color to the more neutral *dhárman* and define the kind of 'foundation' it describes, and thus, *dhárman* becomes 'the foundation of authority' that structures society." So, the term dharma already in its earliest usage has a special connection to royal authority and social order.

These social and royal connotations are further defined in the texts of the middle and late Vedic periods (circa 1000–500 B.C.E.).[16] The earliest texts, the four hymn collections of the *Yajur Veda*—*Maitrya*, *Khaka*, *Taittirya*, and *Vjasaneyi*— constitute a much larger corpus than the *Rig Veda*. Yet, the term dharma occurs in only twenty-two separate passages, much less than the corresponding number in the *Rig Veda*.[17] When we look at later texts—the *brhmaa*s, the *rayaka*s, and the early *upaniad*s—the picture is not brighter. In three major *brhmaa*s[18] —the *Aitareya* belonging to the *Rig Veda*, the *Taittirya* belonging to the *Black Yajur Veda*, and the *atapatha* belonging to the *White Yajur Veda*—dharma occurs just eleven times. I have found the term just three times in the *rayaka*s. It is in the early *upaniad*s that one would expect dharma, so common and so central in later theological discourse, to be accorded a prominent place. Yet, in the three major texts of this genre—*Bhadrayaka*, *Chndogya*, and *Taittirya*—it occurs in just nine passages. If dharma was not a central term in the Rig Vedic lexicon, it was even less so in the subsequent theological discourse captured in the later Vedic texts.

Even more important, during this period the semantic range of dharma becomes more restricted than in the *Rig Veda.* Its association with Varuna, the heavenly king, is highlighted, as is its link to his earthly counterpart; the term is used mostly within the royal vocabulary, and in particular within the ritual consecration of a king (*rjasya*). Dharma is the power that stands above the king, the ruling power of the ruling power. Dharma constitutes the very essence of kingship and the transcendent power that lies behind the visible power and authority of the ruler. The *atapatha Brhmaa* (5.3.3.9),

within the context of the ritual of royal consecration, makes a significant statement regarding the relation among dharma, Varuna, and the earthly king:

> Then to Varuna, the lord of dharma, he offers a cake made with barley. Thereby Varuna himself, the lord of dharma, makes the king the lord of dharma. That, surely, is the highest state when one becomes the lord of dharma. For when someone attains the highest state, people come to him in matters relating to dharma.

Here we get a clearer picture as to what the author of the *atapatha* means by dharma. It has to do with matters regarding which people come to the king and in all likelihood refers principally to legal disputes. Dharma is thus placed squarely within the public realm of law, social norms, and governance overseen by the king. Hence, the king is "lord of dharma" just like Varuna, his heavenly counterpart.

The connection of dharma with law and courts of law is presented even more clearly in a significant passage of the *Bhadrayaka Upaniad* (1.4.14):

> Dharma is here the ruling power standing above the ruling power. Hence there is nothing higher than dharma. Therefore, a weaker man makes demands of a stronger man by appealing to dharma, just as one does by appealing to the king. Now, dharma is nothing but the truth. Therefore, when a man speaks the truth, people say that he speaks dharma; and when a man speaks dharma, people say that he speaks the truth. They are really the same thing.

It is dharma, as enforced by the king, that permits weaker persons to make demands of stronger persons; without dharma and the king, the law of the fish would prevail, where the bigger fish eat the smaller fish. The subtext here is litigation. A weaker man can drag a stronger man to the king's court. A significant point in the semantic development of dharma in the middle and late Vedic periods, therefore, is its close association with law and legal process, and with the royal sphere. It is dharma that constitutes the king in his royal status.

We can detect a further semantic development bringing dharma more broadly into the ethical and religious spheres in a significant passage of the *Chndogya Upaniad* (2.23.1). Here three kinds of individual are presented as people whose very being consists of dharma: "There are three types of persons whose torso is dharma. The first is the one who pursues sacrifice, Vedic recitation, and gift-giving. The second is the one who is devoted to austerity. Third is a celibate student of the Veda living at his teacher's house."[19]

In this passage, dharma specifically refers to three modes of religious life, probably the life of a Brahmanical householder, an ascetic given to austerities, and a perpetual Vedic student living out his days at his teacher's house. This is the kind of meaning that we encounter in the next phase of its semantic history, both in early Buddhism and in the inscriptions of Asoka.

Even though in the ritual theology of the school of Vedic exegesis dharma is defined explicitly as Vedic injunctions governing rituals,[20] in the early ritual texts represented by the aphorisms on the Vedic ritual and on the domestic ritual it does not figure prominently. Its royal connections far outstrip its connections to the Vedic ritual. In ten texts of aphorisms on the Vedic ritual I have examined, the term occurs in just thirty-nine passages. In all but a handful of them, however, dharma does not have the meaning found in either the earlier Vedic texts or the later theological traditions. It appears that the expert scholastic tradition focusing on the ritual developed a very special meaning of its own: the specific details of a rite. Most of these passages deal with how dharmas, taken as

ritual details, are extended from one kind of ritual, often from ritual archetypes, to others modeled after it. The term is used only occasionally also in the aphorisms on the domestic ritual, but in them we detect the extended meaning of dharma we saw in some of the *upaniad*s and we will find in the aphorisms on dharma.[21]

The term dharma, now with the more focused semantic field encountered in the texts of the middle and late Vedic periods, was taken over by the rising ascetic communities, including the Buddhist, Jain, and Ajivaka, along with other items of the royal vocabulary and symbolism to mark the new religious leaders and their doctrines—leaders who were considered spiritual world conquerors and religious counterparts to the world-conquering emperors. The founders of the new religions are called “Conquerers” (*jina*), from which is derived the name for the religion of Jainism; the wheel, a metonym for the war chariot and conquest, is a central symbol in Buddhism, the Buddha’s very first sermon being called “setting the wheel of dharma rolling”; the Buddha himself is called a “wheel-roller,” that is, a world conqueror; and the Buddha’s message is called “edict” (*sana*), paralleling the edicts containing the messages of a king. These emergent ascetic communities were geographically located in the northeastern region of India, what is today Bihar and was then called Magadha. Bronkhorst (2007) has argued that what he calls “Greater Magadha” constituted a distinct cultural region. He has clearly shown the need to take geography into account, not just chronology, in constructing the religious, cultural, and social history of ancient India. We are able for the first time, therefore, to geographically locate a significant moment in the semantic history of dharma.

More than any of the other ascetic religions, however, it was Buddhism that adopted dharma as the most central concept in its doctrine and ethics. It came to define the substance of what made Siddhartha the Buddha, the Enlightened One; it constituted the content of his enlightenment. The triple gem of Buddhism consists of Buddha, dharma, and the monastic order. The Buddhist dharma in a special way referred to the ethical precepts known as *la,* ten of which pertained to monks and nuns and five to laypeople. The latter consisted of abstention from killing, stealing, sexual misconduct, false speech, and liquor.

It was this dharma, mediated by its appropriation into Buddhism and with deep ethical connotations, that the emperor Asoka (c. 268–233 B.C.E.), a convert to and ardent supporter of Buddhism, took up and made the cornerstone of his imperial ideology.[22] Buddhism had spread across India from its Magadhan homeland long before Asoka assumed power. No doubt the concept of dharma, so central to Buddhism, would have been well known by the time Asoka extended his empire to much of the Indian subcontinent. In a series of inscriptions on rocks and exquisitely carved pillars, the earliest examples of writing in India, Asoka articulated an imperial ideology.[23] From the major Asokan inscriptions, if we exclude some outliers such as the explicitly Buddhist texts and records of donations, it becomes clear that the core of Asoka’s effort consisted in preaching dharma to his subjects and in organizing the state bureaucracy to further his mission. Asoka provided several definitions of the dharma that he wanted his subjects to follow and his officials to preach:

> Mother and father should be obeyed, and likewise elders. Kindness should be shown to living beings. Truth should be spoken. These are the attributes of dharma that should be propagated. (Major Rock Edict 2: Brahmagiri)

> Obedience to mother and father is good. Giving to friends, acquaintances, and relatives, to Brahmans and ascetics is good. Abstention from killing living beings is good. Spending little and storing little are good. (Major Rock Edict 3: Girnar)

> This auspicious rite, however, produces great results, namely the auspicious rite of dharma.

That is as follows: Proper regard toward slaves and servants. Reverence toward elders. Restraint with regard to living beings is good. Giving to ascetics and Brahmans is good. (Major Rock Edict 9: Girnar)

Putting together the elements contained in these and other definitions he provides, we can come up with this list of virtues that constituted the Asokan dharma:

1. obedience to mother and father, and to elders;
2. kindness to living beings; —in a special way, abstention from killing living beings;
3. generosity to friends, relatives, Brahmans, and ascetics;
4. speaking the truth;
5. spending little and storing little; that is, life not given to extravagance;
6. proper regard to slaves and servants.

The centrality that dharma now occupied within both the theologies of the new religions and the imperial ideology of the most powerful emperor of the ancient period made it impossible for the theologians and systematizers within the Brahmanical scholarly community to ignore the term any longer. They too made it the central concept of their own theological discourses, presenting the Brahmanical way of life, norms of society, ethics, duties of the king, and civil and criminal law as dharma. Further, they started a brand-new genre of literature, *dharmastra* or treatises on dharma, devoted to this concept. We can only speculate here, but we cannot be far wrong in assigning a date of around the third century B.C.E., perhaps a bit earlier, to the beginning of this genre.

TEXTUAL TRADITION OF THE SCIENCE OF DHARMA

The jurisprudential literature examined in this sourcebook comprehends, as already noted, two expert traditions: political science and science of dharma. Another expert tradition that exerted a deep influence on the latter is Vedic exegesis.

The literature of the science of dharma bears the generic title *dharmastra*, that is, the *stra* of dharma. What precisely is denoted by the Sanskrit term *stra* or “science”? Traditional Indian scholarship theorized this concept at an early date. A “science” presents a codification of rules that govern a specific area of human activity. This system of rules, however, is viewed as having priority over actual practice; the former is not derived from the latter. Thus, to use Geertz’s terminology, a science is primarily a *model for* action and practice, and only subsequently and derivatively a *model of*. This primacy of theory over practice is embedded in the Indian theorizing of science. Even in such mundane areas as handling horses and elephants or engaging in lovemaking, the theoreticians contend, the practice of these activities would be impossible if an original blueprint had not been provided by the corresponding science.

Pollock’s several studies on the nature and history of the concept of science have done much to elucidate this uniquely Indian form of discourse.[24] He defines the term: “*stra* was thought of generally as a verbal codification of rules, whether of divine or human provenance, for the positive and negative regulation of particular cultural practices” (Pollock 1989a: 18). The term thus signifies both a discipline and a treatise; a science is both a system of knowledge that a person would seek to master and a treatise codifying such knowledge that a person would read, memorize, and understand. It is this dual aspect of science that makes the term difficult to translate with a single English word.[25]

The term *dharmastra*, then, refers both to the expert tradition of scholarship on dharma/law, that is, the science of dharma, and to treatises on dharma codifying that science. The term *dharmastra*,

aphoristic texts on dharma, is frequently used to refer to the early treatises of this genre that were composed in aphoristic prose (*stra*). Some scholars make what I think is an incorrect distinction between aphoristic texts on dharma and treatises on dharma, taking the former to be in prose and the latter to be in verse. The category treatise on dharma (*dharmastra*) refers to the texts that encode the science of dharma, not to the literary form of a composition.

Unbroken over two millennia, the literary production of the science of dharma is undoubtedly one of the longest in Indian history. When that history started is difficult to say; the earliest literary products of the tradition are lost.[26] The term *dharmastra* is used for the first time by the grammarian Katyayana, who may be assigned to the late third or early second century B.C.E.,[27] and Patanjali, who wrote a commentary on Katyayana's work probably in the middle of the second century B.C.E., refers specifically to *dharmastra*, aphoristic text on dharma.[28] So, the beginnings of this literary tradition go back to at least the third century B.C.E. Texts dealing with dharma were being composed up to at least the eighteenth century C.E. both in the context of British colonial courts requiring expertise in Hindu law and in the more traditional context of commentaries and legal digests.

This long textual history can be divided broadly into three phases. They roughly track historical periods, but there is considerable overlap especially between the second two; different types of legal texts continued to be produced during roughly the same period. First, there are independent and original treatises on dharma composed in either prose or verse, or a combination of the two. Even though there is considerable interdependence among these texts, they cite or comment on their predecessors only rarely. These are normally referred to as *dharmastra* or even more commonly as *smti*, texts of recollection. They are ascribed to celebrated seers and sages of old such as Vasistha, Gautama, and Yajnavalkya, and sometimes even to gods such as Visnu and Brihaspati. Texts of this type continued to be composed well into the second half of the first millennium C.E. Much of this later textual production, however, has been lost; we do not have any manuscripts. We know about them only through citations in medieval texts. Reliable manuscripts of only ten texts have survived: Apastamba, Gautama, Baudhayana, Vasistha, Manu, Yajnavalkya, Narada, Visnu, Parasara, and Vaikhanasa.[29] The first four are written in aphoristic prose and all probably pre-date the Common Era. They refer to seventeen other authors whose works have not survived.[30] Kane (1962–1975, I: 304) estimates that approximately one hundred treatises on dharma are cited in medieval texts. So, roughly 90 percent or more of all the early literary products of this tradition became extinct by about the fifteenth century C.E., if not earlier. Indeed, many of the medieval commentaries and digests appear to cite these extinct treatises not from manuscripts that the authors possessed but from citations in earlier texts. The causes of this large-scale extinction of texts are unclear. Some scholars have suggested that a text lacking an ancient commentary did not survive long. This can only be a partial reason, however, because aphoristic texts on dharma composed before the Common Era—and other ancient texts such as Panini's grammar and Caraka's medical treatise—survived over a long period of time without the benefit of commentaries, and we also have numerous extant manuscripts that contain only the texts of treatises on dharma without attached commentaries. The voluminous legal digests that were produced during the medieval period starting around the twelfth century and that presented topically arranged citations from the ancient texts may themselves have made experts less dependent on the originals. We know that, given the climate of tropical India and the perishable writing material used, mostly palm leaves, manuscripts deteriorated fast, and if a text was not recopied within a century or two it was likely to fall victim to decay and insects. The earliest manuscripts of even the surviving treatises go back only to about the twelfth century C.E., and most to a much later period.

The second phase commenced in the second half of the first millennium C.E., and it consisted of commentaries on the basic treatises on dharma. Four major commentaries survive from the early period (600–900 C.E.): commentaries on Manu by Bharuci and Medhatithi, on Yajnavalkya by Visvarupa, and on Narada by Asahaya. Numerous commentaries and subcommentaries continued to

be written well into the colonial period, the last, to my knowledge, being Krisnapandita's commentary on Vasistha's aphoristic text on dharma composed in the middle of the nineteenth century.

The third phase probably started around the twelfth century, perhaps a bit earlier, when legal digests called *nibandha* or *dharmanibandha* began to be composed. The best-known digests are encyclopedic works divided into topical sections dealing with the entire range of subjects in the science of dharma. Within each section also, topics are arranged in a logical manner so that readers have ready and easy access to any they may wish to investigate. Under each topic citations from original treatises on dharma, often with commentary or explanatory glosses, are given. Two good examples of the encyclopedic kind of digest are Laksmidhara's *Wishing Tree of Duties* (*ktyakalpataru*, twelfth century) and Devanna Bhatta's *Moonlight of Texts of Recollection* (*smticandrik*, twelfth–thirteenth century). Other authors adopted a different strategy, writing monographic compositions on individual topics of dharma, such as purification, legal procedure, inheritance, gift giving, adoption, and ancestral offerings. Digests, unfortunately, are often dry and do not engage the intellectual debates seen in the earlier commentaries. They often demonstrate the worst aspects of a legal mind: simply citing sources, as today's lawyers cite case precedents.

This sourcebook contains extracts from all three kinds of texts within the science of dharma, although, given the obvious limitations of space, only a small but hopefully representative—what I think are the most significant—sampling of them is included here.

EPISTEMOLOGY OF DHARMA

Dharma, as already noted, became incorporated into Brahmanical scholarly discourse as a central theological and legal term at a relatively late date, probably around the fourth or third century B.C.E. We get a glimpse of its new incarnation in works such as those of Apastamba (third century B.C.E.) and the grammarian Patanjali (second century B.C.E.). A novel and central feature in treating this topic within the science of dharma is the discussion of the epistemology or the sources of dharma at the very outset of each treatise: What is dharma? And where do we find it?

This parallels the rule of recognition of H.L.A. Hart, discussed above. Every legal system must have rules whereby those subject to it and officials in charge of administering it can know how to recognize valid laws. The explicit discussion of the rules of recognition is a unique and unprecedented feature of the early treatises of the science of dharma; no text of other expert traditions deals with this core issue. The parallel ritual texts—the aphoristic texts on the Vedic ritual and on the domestic ritual—have no similar discussion of their epistemic sources. Even in later times, the most offered is the mythical origin of a particular discipline such as medicine or drama. These unique epistemological discussions provide valuable clues regarding the sociological and theological reasoning behind the term *dharma* and its application to various legal sectors.

Unlike Vedic sacrifices and domestic rituals, the topic of the early aphoristic texts on dharma was subject to divergent appropriations and explanations by rival religious and political groups. Especially powerful, no doubt, were the definitions and epistemologies of dharma given by the Buddhists, and the appropriation of the concept by Asoka within a new imperial ideology. I think it is within the context of these theological disputations that we must locate the discussion of dharma and its epistemology in the early treatises. The disputed nature of dharma was probably the impetus to deal with epistemological issues at the very beginning of these works. What is the true and legitimate dharma? And how do we come to know it? Are the sources from which we can derive correct rules for living singular or multiple? And if they are multiple, how are they related to each other? Reading between the lines, so to speak, of these early texts, we can detect a certain defensive posture and arguments against unspecified and silent opponents outside the Brahmanical

community. Further, the authors within the Brahmanical tradition show a remarkable ability to engage each other in open debate and dissent.[31] The insistence on "community standards," for example, where the authoritative community is defined as consisting of Brahmans learned in the Vedas, draws a sharp contrast with the unique charismatic authority of the Buddha with respect to true dharma within the Buddhist tradition. True dharma flows from the enlightening experience and from the mouth of the Enlightened One. Every Buddhist canonical text begins with the words: "Thus have I heard." The exegetical theory that the Veda is *apaurueya,* without an author human or divine, also confronts the Buddhist definition of dharma as derived from the experience of a human being.

The epistemological problem facing the early Brahmanical jurists was exacerbated by the fact that within the confines of dharma they had to pack a variety of rules governing almost every aspect of human life and behavior: ritual, religion, morality, family law, commercial law, criminal law, punishment, penance, and even etiquette. The jurists themselves recognized the validity of territorially or socially restricted rules, often referred to as the dharma of a region, a village, a corporation, or a family.[32]

The distinguished ninth-century jurist Medhatithi, in his commentary on Manu's treatise on dharma (*MDh* 1.2), provides a tantalizing glimpse into the complex notion of dharma.

> We see that the term *dharma* is used with reference to what should be done (*kartavya*) and what should not be done (*akartavya*), that is, injunctions and prohibitions that have an unperceived purpose, as well as with reference to an action (*kriy*) falling within their scope…. Thus, with respect to the result there is no difference whether dharma is the rite (*karma*) called "Eighth-day" or the obligatory nature of performance (*kartavyat*) relating to it.

The main point here is whether dharma refers to the act that one is obliged to perform (which would be a rite) or the obligation to perform that act (which would be law). I think this distinction is at the heart of the prevalent confusion with regard to the meaning of *dharma*. Unfortunately, Medhatithi does not explain further, simply referring his reader to his other work, which from elsewhere we know is entitled "Inquisition Into Texts of Recollection" (*smtiviveka*), but which has not survived.

The latter meaning dominates the legal discourse within the science of dharma. There, rules and prohibitions are spelled out governing various aspects of human life, including family law such as inheritance, criminal law, and legal procedure. The wonderful Sanskrit term *kartavyat,* "should-be-done-ness," the fact that an obligation to perform a particular action exists, comprehends this meaning of *dharma*, a meaning foregrounded in such common expressions as "dharma of kings," "dharma of social classes," and "dharma of a region."

The former meaning takes dharma into the realm of actual moral and immoral actions, that is, into the semantic area normally covered by the theology of karma. This is the reason quite often *dharma* and *karma* are used as synonyms, and why good conduct is equated with dharma. From this meaning we also get derivative forms, such as *dhrmika*, virtuous or pious, and its opposite, *adhrmika*, impious or sinful. The multiple references of this kind of dharma are encapsulated in this passage of Manu (*MDh* 1.108–10):

> Good conduct is the highest dharma, both what is declared in the Veda and what is given in texts of recollection…. When a Brahman has fallen away from good conduct, he does not reap the fruit of the Veda; but when he holds fast to good conduct, texts of recollection say, he enjoys its full reward. Seeing thus that dharma proceeds from good conduct, the sages understood good conduct to be the ultimate root of all ascetic toil.

Dharma here refers to all kinds of religious, pious, and ascetic activities; it means doing good and being good. This deeply moral substrate of the concept is epitomized by the formal definition of the Emperor Asoka noted earlier.

Related to the latter is the extended meaning referring to the result or the fruit of an action. Often *dharma* in this context is translated as merit, coinciding with the meaning of the Sanskrit term *puya*. We have statements, therefore, about accumulating or growing dharma as if it were a bank account, and about dharma being a friend who accompanies a person even after death.

> Gradually and without hurting any creature, he should pile up dharma like termites an anthill, so as to secure an escort in the next world; for in the next world, neither father nor mother stands by him as his escort; nor does son, wife, or relative. Only dharma stands by him. Alone a creature is born, and alone it dies. Alone it enjoys its good deeds, alone also its evil deeds. While his relatives discard the dead body on earth as if it were a piece of wood or a clod of earth and depart with averted faces, dharma accompanies him. To secure a companion, therefore, let him gradually pile up dharma every day; for with dharma as his companion, he will cross over the darkness that is difficult to cross. Dharma quickly leads that man, who is devoted to dharma and whose sins have been erased by ascetic toil, to the next world, glittering with an ethereal body. (*MDh* 4.238–43)

Buddhist jurists had the good sense to select a different term for their own monastic laws: *vinaya* . Their Brahmanical counterparts, who had opportunities to do so, did not. The extension of the concept to include rules that we would today recognize as civil or criminal law made the task of finding an adequate rule of recognition difficult. Much intellectual labor was spent on this problem.

The Hartian rule of recognition is inextricably bound to territory, especially to the nation-state, in which the laws so recognized are applicable. So, the rule "the queen in parliament" applies to the United Kingdom, and "bill passed by Congress and signed into law by the President" applies to the United States. For people living in India or China these rules will mean nothing, unless they happen to be visiting these countries and are temporarily under their laws. For the authors of the treatises on dharma, however, the situation was much more complicated. Law as dharma was not territorially limited; it was applicable across political divides. The polities within the larger territory of India, whether large empires or tiny kingdoms, did not play any significant role in the epistemology of law, except perhaps when a king's edict was considered a valid law. Law as dharma had no territorial or even temporal limits, and its epistemic sources, therefore, had to be universally applicable and recognized.

The invocation of the Veda as the ultimate epistemic source of dharma by the early scholars of the science of dharma made dharma universally applicable, because the Veda was theologically defined within the tradition of Vedic exegesis as suprahistorical, eternal, and not authored by any individual, human or divine. How can such a transcendental notion square with the contingent and geographically specific nature of most human laws?

The adoption of dharma to signify law in all its aspects and ramifications and the prominence given to the Veda as ultimately the single epistemic source of law led to theoretical contradictions that occupied thinkers down the centuries. How, for example, can we derive all the myriad and myriadly diverse laws within widely different social, historical, and geographical settings from a single transcendent source? As already noted, within ancient Indian jurisprudence there was no legislative branch of government, even though a king's power to rule by decree was recognized. Laws were not enacted; they were discovered.

The restriction of the epistemic source of law to the Veda, however, by an elite segment of the population, male Brahman intelligentsia, had much to do with the arrogation and legitimation of

power within society. This was carried out principally within the intellectual tradition of the science of dharma, which Pollock (2005: 57) has called "the explicit program of domination of Sanskrit culture." As Derrett, in his learned and caustic comments on Louis Dumont's thesis of the total separation of religious and secular realms divided hierarchically between Brahmans and kings, has shown, such a separation, if it ever did exist, was also a creation of the Brahman ideologues precisely for the purpose of increasing their power: "The Brahmans' abnegation of secular power is a myth. Brahmans took power when they could, as they do still."[33] We must keep in mind that knowledge as such, whether it is of the ritual or of astronomy, is always coupled with power, and also that law and the guardianship of law are in a very special way deeply embedded within social, political, and economic power structures. Law is both necessary and perilous; it is a double-edged sword. As Leslie Green, in the introduction he wrote to the third edition (2012: xv) of Hart's book, says, law and adjudication are deeply political:

> The appropriate attitude to take towards law is therefore one of caution rather than celebration. What is more, law sometimes pretends to an objectivity it does not have for, whatever judges may say, they in fact wield serious power to create law. So law and adjudication are political. In a different way, so is legal theory. There can be no "pure" theory of law: a jurisprudence built only using concepts drawn from the law itself is inadequate to understand law's nature; it needs the help of resources from social theory and philosophic inquiry.

It is important to remember, therefore, that laws and the enforcement of laws are intertwined with the power structure of a society, as we read the seemingly abstract and impartial ruminations of legal scholars in India spanning over a millennium. For example, the simple act of limiting the epistemic source of law/dharma to the Veda had the effect of granting enormous power to the sole custodians of this orally transmitted document, learned male Brahmans, and excluding all women and non-Brahmans, as well as the texts and traditions of which they may have been the guardians.

The manner in which epistemological issues relating to dharma were raised and resolved changed with time and theological developments, and this sourcebook will follow the twists and turns they take. We can, however, detect three phases in the history of scholarly engagement with these epistemological issues. The first is the initial response found in the texts produced in the last three centuries before the Common Era, a response continued in the texts of the first half of the first millennium C.E. without, however, adding too many significantly new ingredients into the discussion. This phase is covered in the first five chapters. The second phase is represented by the commentators from the traditions of both Vedic exegesis and the science of dharma writing in the second half of the first millennium C.E. These authors engage seriously with the theoretical issues raised by the identification of the epistemic sources of dharma already noted. The third and last phase is represented by commentaries and legal digests produced in the second millennium C.E. Clearly the issues that occupied the scholars of the previous half-millennium had lost their import and urgency, and writers of this phase for the most part simply give the epistemic sources without seriously engaging the thorny issues they raise. Given that the authors of the last two phases present their arguments well and in great detail, I will deal with the texts of the first phase more exhaustively in both the introduction and the headnotes to the texts of that period. This is also necessitated by the fact that these texts are brief and frequently aphoristic in nature, and the history of scholarly debates that underlie the brief statements have to be uncovered and explored in order to understand the intellectual history of the period.

At the outset (chapter 1) I take up for examination the two earliest Brahmanical scholars dealing with dharma: Apastamba, the earliest author of an extant treatise on dharma, and Patanjali, whose

"Great Commentary" on the Sanskrit grammar of Panini is a mine of cultural information, even though he comes from outside the science of dharma. He provides external insights into the issues that preoccupied scholars within that intellectual tradition.

Apastamba presents a very early attempt to grapple with the issues relating to law and dharma. In him we see for the first time dharma used as an umbrella concept to include all aspects of law. He takes it to encompass a wide variety of norms, both those contained in the Veda with respect to ritual activities and those followed by living communities in their day-to-day activities. Dharma encompasses both the ritual/ moral lives of people and the social regulations governing such areas as proper food and food etiquette (1.16–19; 2.2–4), reception of guests (2.6–9), and ancestral rites (2.16–20). But he also includes areas that modern scholars would recognize as law: inheritance (2.13–14), duties of the king and state officials (2.25–26), crime and punishment (2.26–29), taxation (2.26.9–17), and legal procedure (2.29.5–10). These topics became standard in later texts on dharma.

How does one come to know the correct dharma in all these areas? In the absence of a legislative authority, where does one find it? Apastamba uses the technical term *prama*, also employed by philosophers dealing with logic and epistemology, in this context with the meaning of "means of knowing" or epistemic source, as well as of authority, especially in the context of scriptural sources recognized in Indian logic as verbal authority (*abdaprama*). This usage was continued by later authors. Apastamba gives a twofold answer to this epistemological question. First, dharma is "derived from agreed-upon normative practice" (*smaycrika*),[34] and second, it rests on the authority of the Veda (ch. 1.1: #1). The two words in this compound, "agreement" and "normative practice," give us an insight into what Apastamba had in mind when he characterized dharma in this way.

The main word is "normative practice" (*cra*), and, given that this term was then rather new in the Sanskrit vocabulary, it is important to understand its early meanings.[35] In Apastamba's vocabulary it means practice, and often more specifically normative practice that becomes a source of knowledge with respect to dharma (model of and model for): one can learn dharma by observing the practice of those who know and follow it just as one can learn good Sanskrit—so Patanjali would argue—by observing the speech patterns of particular individuals and communities. The term's usage in the grammatical texts show that it refers to behavior patterns characteristic of a particular group of people who become models for others to follow.[36]

The first word of the compound, "agreement," has a clearer meaning. In the context of legal texts, it refers to a compact or agreement, either explicit or implicit, such as when a person belongs to a community with special rules governing its members. Frequently, the term refers to the implicit or explicit agreement on major points of community behavior.

The expression that qualifies dharma in the opening sentence of Apastamba, then, indicates that the epistemic source of dharma is the normative behavior patterns that are generally accepted. But accepted by whom? According to Apastamba, by those who know dharma. This is a somewhat circular argument: how would one know that some people know dharma, when it is through their conduct that one comes to know dharma in the first place? This is a problem similar to that confronted by Patanjali (ch. 1.2: #2) in defining the category "cultured elite" (*ia*), who determine what correct speech is. Patanjali resorts to the notion of a cultural or sacred geography, the region where the cultured elite live, while Apastamba does not directly address the issue. However, elsewhere he uses the term *Arya* to refer to the kinds of people whose agreement regarding a practice provides the proper authority. It is also possible that Apastamba was aware of the notion of a sacred and authoritative geography but rejected it, because he explicitly states (see ch 1.1: #2) that a person should follow the conduct approved by Aryas "in all regions."

The second way to know whether a particular practice is authoritative is to see whether it is enjoined in the Vedas. However, the Vedas are given here only as an external check regarding the validity of a particular practice of a particular community, not as the direct source of dharma.

That for Apastamba the Veda is not the single source of dharma is clear also from his statement

at the very end of his treatise (see ch 1.1: #3) that dharma can be known from women and Shudras, the last of the four social classes (*vara*), who are excluded from Vedic rites and access to the Veda. This position is astonishing, given that in the mainstream of Brahmanical theology it would have been inconceivable to present Shudras and women as having access to Vedic knowledge or as models of correct behavior.

Dharma, therefore, is derived from the practice of people in the world. But not everything that people in the world do is dharma, and much of the discussion in the early texts revolves around how best to circumscribe the communities whose practices constitute dharma. For Apastamba the criterion is found in the term *Arya*: people should model their behavior after that of *Arya*s (ch 1.1: #2–3). We do not get a clear picture of who they are, however. From the Buddhist appropriation of this term and its very different use in Kautilya's "Treatise on Politics," we see that the definition was not self-evident and was subject to debate and controversy. The presumption is that, for Apastamba, they are Brahmans, but he says that dharma can be derived from Shudras as well. So does *Arya* comprehend Shudras also, in a way similar to its usage by Kautilya, where *Arya* appears to refer to free men as opposed to slaves without reference to social class or caste?[37] Are Aryas defined by their conduct or by their birth, or both? These are open-ended questions left unanswered by Apastamba.

In dealing with dharma derived from the Vedas, Apastamba introduces concepts that would become standard in later texts of the science of dharma. Thus we read that not all the ritual rules and procedures are found in the extant Veda; these have to be learned from actual practice. And one must infer the existence of lost Vedic texts as the basis for such practices (ch 1.1: #5–6). We have here for the first time clearly articulated both the concept of a lost Veda (the complete Veda is not currently available) and the hermeneutical principle of "inferred Veda" on the basis of current authoritative practice. I think that Apastamba applies this principle only to Vedic rituals and not to the entirety of dharma. But this step would be taken by his successors (ch. 6).

There is another criterion: a practice to be accepted as dharma must not be something undertaken because of the pleasure derived from it (ch. 1.1: #5). In other words, for a practice to be normative it must have a motive beyond the immediately practical. Elsewhere Apastamba provides a more general principle: for a practice to be dharma it must have a reason that is not tangible or perceptible.[38] That dharma must have a transcendental motive became a centerpiece of later theology; it is found even in Patanjali (ch 1.2: #3) with reference to the use of correct Sanskrit. These are the two sides of the dharma coin: on the one side are rules that must be obeyed within society; on the other are the religious basis of such rules (see ch 1.1: #10). The two exist in tension, because our authors did realize that not all rules could be tied to either the Veda or some transcendental motive.

A final significant notion introduced by Apastamba (ch 1.1: #8) is the plurality of dharmas or laws: different groups, places, and regions can have different dharmas. This plurality was a cornerstone of legal thinking in ancient India, and it remained in creative tension with the urge to unify dharma under a single notion or umbrella, generally the Veda. Apastamba speaks only of the dharmas of regions and family lineages, but this would be expanded in later times to include other places such as villages and other groups such as guilds and associations. These specific dharmas, however, become authoritative only if they do not contradict Vedic provisions. This is thus a negative criterion; a practice of a community does not have to be based on the Veda, it merely should not contradict an explicit provision of the Veda—a fig leaf for the theological purists.

I turn now to the grammarian Patanjali, who draws an interesting and significant parallel between correct Sanskrit and proper dharma. For him, there are two distinct and parallel domains of correct Sanskrit, the Vedic (*vaidika*) and the worldly (*laukika*).[39] The first is found in the extant Vedic texts, and the second, correct contemporary Sanskrit, in the speech of a special group of Brahmans whom he identifies as "cultured elite" (*ia*). What is significant for our discussion is that these two categories also comprehend the Vedic and the worldly realms of law. The dual domains of dharma of Apastamba parallel the two domains of Sanskrit in Patanjali. For Apastamba, dharma can

be found in the Vedas and in the contemporary practices and customs of living communities. This dual domain was subjected to critique and rejection in the later phases of the science of dharma, discussed in subsequent chapters.

The examples of worldly speech given by Patanjali are not common everyday expressions but, significantly, are all derived from statements in treatises on dharma. What is significant here is that for grammarians both the Veda and the world are authoritative with respect to correct Sanskrit. This authoritative nature is carried over into the framework of dharma when Patanjali cites worldly injunctions. Clearly, not everything that is said or done is so authoritative. Thus "world" for Patanjali referred to the science of dharma. We have confirmation of this conclusion. The two examples of not killing Brahmans and not drinking liquor (ch. 1.2: #1) that Patanjali (on Panini 6.1.84; III: 57–58) takes to be worldly are cited again in his comments on Katyayana's statement (*Vrttika* 39 on Panini 1.2.64), which reads: "And so also the treatise on dharma." And as an example of such a statement Patanjali gives the two injunctions: "One should not kill a Brahman. One should not drink liquor." Clearly, for him "world" and "treatise on dharma" are, if not synonyms, at least equivalents with respect to authoritative speech.

So for Patanjali, just as for Apastamba, large areas of the science of dharma, the rules regarding proper conduct, were not derived from the Vedas but from normative practices in the world. Moreover, these practices came encoded in injunctions that are part of texts, and these textual forms, that is, the treatises on dharma, invest them with authority.

Patanjali also takes up the issue of correct speech, in this case good Sanskrit, and why people should be obliged to use it when they can equally well communicate what they want to say in a local dialect or using dialectical forms of words (ch. 1.2: #3). He calls correct Sanskrit *abda* (literally, speech) and dialectical or vernacular forms *apaabda* (wrong speech) or *apabhraa* (corrupt speech). Thus, "speech" is not simply speech but, in a pregnant sense, correct and good speech, which is Sanskrit, just as practice (*cra*) is not just practice but correct and model practice. Corrupt speech, on the other hand, comprehends the local dialects or common speech. So, why should one use correct Sanskrit when the object of communication can be achieved equally well through the use of "incorrect" speech or local dialects? He gives the example of *gau,* which is the proper Sanskrit word for cow, while there are numerous dialectical variants such as *gv, go, got, gopotalik*.[40]

Patanjali answers that restricting communication to Sanskrit is for the purpose of dharma. Here we come across a meaning of dharma noted earlier as religious merit won through such usage. Just as communication of meaning, the primary reason for speech, can be carried out in any language, so the worldly objective behind activities coming under the purview of law can be achieved in numerous ways. Law as dharma, however, restricts these ways to a few, which are the only proper or correct ways of achieving those objectives. This restriction is done for the purpose of dharma, as in the case of similar restrictions imposed on the use of language. Thus, Patanjali says (ch 1.2: #3), one can achieve the objective of eating, namely the allaying of hunger, by eating anything edible, even dog meat. However, the law restricts these edible foods to two categories: what is to be eaten (*bhakya*) and what is not to be eaten (*abhakya*). This, of course, can be extended to all areas of human activity governed by rules.

Here we have a theological/philosophical reflection on law: law restricts activities naturally flowing from human appetites and needs, and such restrictions are aimed at both satisfying this-worldly needs (allaying hunger) and attaining the otherworldly good (merit). This philosophy remained a cornerstone of later thinking regarding dharma in both the science of dharma and the tradition of Vedic exegesis.

The three texts examined in chapter 2 take law/dharma and its epistemology in new directions when compared to Apastamba and Patanjali. The most striking changes are: the central position assigned to the Veda as the primary and ultimate source of dharma, the prominence given to the category of recollection or text of recollection (*smti*), and the adoption by legal scholars of the

sacred and normative geography first advanced by Patanjali, along with the associated concept of "cultured elite." The multiplicity of law presented in Kautilya's *Treatise on Politics* is reduced to the univocal concept of dharma, which will from now on coexist in awkward tension with the variety of concrete laws on the ground indicated by expressions such as "dharma of regions" and "dharma of castes." The theological and theoretical assertion that dharma is rooted in the Veda gave rise to a long and complicated history of hermeneutics that attempted to derive the observed diversity of law from the single font of the Veda, a history I will document in the coming chapters.

This move in the epistemology of law, as already noted, is intimately connected with the attempt by the Brahmanical community and its elites to garner power within society. These theological developments have to be located within the social, political, and religious history of northern India in the last few centuries B.C.E. when political changes, such as the reforms associated with the Maurya Empire and Asoka, and religious innovations, represented by Buddhism and Jainism, challenged Brahmanical exceptionalism and put the Brahmanical theologians on the defensive. If law/dharma comes from the Veda, then the guardians of the Veda, the only ones in whose memory it resided, namely the learned Brahmans, became ipso facto also the guardians and guides with respect to law within society. Society in general had to turn to them to understand the proper norms of behavior; kings had to turn to them to articulate and administer law. The dharma propagated by the Buddhists and by Asoka, furthermore, was counterfeit, because it was not based on the only legitimate epistemic source, the Veda.

For the first time in the available history of the science of dharma, Gautama, the third author we examine (Ch. 2.1), presents the Veda, in the singular, as the root (*mla*) in which dharma is anchored and from which dharma has sprouted. Further, he identifies two other roots: the recollection and conduct of those who know the Veda.

Note that "Veda" is the very first word of this document, thus highlighting its centrality in the thought of Gautama; by its position he wants to signal the supremacy of the Veda with regard to dharma.[41] It is in the singular, perhaps reflecting the emerging theological view that all of the Veda is authoritative for all, irrespective of the Vedic branch to which a person may belong.[42] It is unclear whether the term "root" has a special significance; this is the first time it is used within an epistemological context.[43] If dharma is rooted in the Veda, this may signify that although it derives vitality from the Veda, in practice its branches may spread far and wide. The second clause posits the recollection and conduct of particular individuals to be also the root of dharma. These individuals are said to be "those who know it," and the pronoun here quite clearly refers to the Veda. Only their recollection and conduct provide guidance with regard to correct dharma. With this Gautama opened up a line of thinking that culminated in the theology that Veda is the single source, directly or indirectly, of all dharma, even though Gautama's own words can be interpreted in other ways as well. This hermeneutical stance became standard in later legal texts, even though, as we will see in later chapters, it posed numerous theoretical difficulties.

Another issue relates to what exactly Gautama means by recollection (*smti*) and conduct (*la*). The first, in all likelihood, does not mean a text or treatise, as it came to signify in later literature.[44] In compound with conduct, it must mean something that can be learned from people who know the Veda. I think "recollection" here comes close to its etymological meaning of "memory," but, as Klaus (1992) has shown, in many contexts it means something more than passive memory and refers specifically to the application of close mental attention to something: "Indian people in Vedic and early Buddhist times made no distinction between becoming conscious of things of the past and of those of the present, as far as the psychological process is concerned."[45]

I think "recollection" in Gautama comes close to this meaning. Originally it probably referred to recollections of learned people: you could ask them, "How should I perform this rite?" and they would think about it and tell you how it should be done, modeled on their recollections of how it was done in the past. This is, of course, how much of human knowledge, especially in nonliterate

societies, is handed down from generation to generation. The term gradually began to include also authored texts that presented such traditional knowledge in systematic and textual form, and by the time of Manu (second century C.E.) came to be a synonym of "treatise on dharma." This ambiguity—oscillating between recollection and texts containing those recollections—runs through all our texts. I have, therefore, translated *smti* as "recollection" when the reference is clearly to such nontextual forms, and as "texts of recollection" when it refers to authored, and often written, works. However, in the original Sanskrit the creative ambiguity is always present—something, unfortunately, that has to be sacrificed in the translation—and in debates the arguments flow simultaneously from both senses of the term.

Recollection is distinct from conduct, which one gathers by observing the day-to-day practices of the elite, the kinds of things they would habitually do and the way they would do them. Recollection is articulated in language, while practice or conduct is observed in behavior patterns. I think it is this possibility of linguistic articulation that made possible the later semantic extension of recollection to include versions verbalized in textual form.

In selection #2, Gautama turns to the enforcement of law by the king, and in that context acknowledges the authority of the dharma of different regions, castes, and families. But he makes it clear that these have authority only when they do not contradict scriptural provisions. He also clearly enunciates the authority of various corporate groups to enact and administer rules for themselves. Here we have a realist view and presentation of law[46] without the theological overlay in the opening discussion of his book, when he dealt explicitly with the epistemology of dharma.

The practical need to enforce "real" law makes the theologian depart from his theological absolutism found in the context of legal epistemology. Even though these specific laws are said to be authoritative only when they are not in conflict with sacred scriptures, as I have already noted, that is simply a fig leaf. Most legal provisions are not covered in the Vedic texts anyway, and thus there simply is no possibility of conflict. Further, there is no attempt to find an epistemic source for these disparate laws, whether Vedic or not. Law on the ground is simply accepted as a given, the recognized and normative customs of regions and groups.

Gautama (see #3), like Apastamba before him, talks about a body of experts entrusted with the power to rule in doubtful matters. But he provides details about the constitution of such a body that are lacking in Apastamba. This body is called "legal assembly" (*pariad*) and is said to consist of a minimum of ten people. As noted with regard to the articulation of power within the epistemology of law, here are Brahmans—after all, only they are the cultured elite and have the qualifications to sit in a legal assembly—presiding over councils that are called upon to resolve unclear issues relating to law. Such councils may have also acted as bodies that provided legal consultation to individuals, groups, and even the state.[47]

The two authors who come after Gautama, namely, Baudhayana and Vasistha, advanced the discussion of epistemology only marginally. Both take the category of recollection, introduced as a root of dharma by Gautama, as not simply orally articulated recollections but also actual texts that record the authoritative recollections of the Brahmanical elite. This is the normal meaning ascribed to this important category in later Indian literature. Yet neither Baudhayana nor Vasistha explains what precisely these texts of recollection are. It seems unlikely that the category is self-referential, which would be tautological: the dharma that they are expounding cannot have as its authoritative source the very texts they are composing. We will have to wait until Manu to have this question answered.

These two authors also introduce for the first time two concepts[48] that Patanjali advanced in his discussion of what may be called the epistemology of Sanskrit: how do you know good Sanskrit? These are the notions of "cultured elite" (*ia*), who are by definition speakers of correct Sanskrit, and of a cultural-religious geography, the "land of the Aryas," inhabited by them. Baudhayana and Vasistha not only give definitions that are almost identical with those of Patanjali but also present

the two as sources of dharma: the cultured elite living in the land of the Aryas are models of and models for living and acting in accordance with dharma.

Whereas Gautama presents the practice of "those who know the Vedas" as an epistemic source of dharma, both Baudhayana and Vasistha use instead the expression "cultured elite"; they are the standard for correct dharma, as they are for correct Sanskrit. But we see the authors still groping for a proper technical term to use with regard to the behavior patterns of these individuals that provide the basis for dharma. Baudhayana uses the term *gama*, with a meaning something like traditions that have come down from generation to generation. Elsewhere in his text he uses the expression *iasmti*, that is, the recollection of the cultured elite. Vasistha, on the other hand, uses the term *cra*, normative practice, already employed by Apastamba and Patanjali, and it became the standard in later texts of the science of dharma for the third epistemic source of dharma.

One other significant innovation introduced by Vasistha is the term *ruti* in place of Veda in discussing the epistemic sources of dharma.[49] The word literally means hearing or what is heard, and emphasizes the aural nature of the Veda; you can at any given point in time actually hear it being recited. And Vedic recitation is a central duty of every Brahman. One can find out the exact textual form of a Vedic passage from this hearing. The term is probably related to the pedagogy of Vedic instruction; the students recite exactly what they hear from the mouth of the teacher and exactly how they hear it—the precise articulation and intonation of the words. Vasistha's text represents the first use of this important term in the discussion of legal epistemology within the science of dharma,[50] and its use by him in the coordinative compound *ruti-smti* (scripture and text of recollection), referring to the dual textual source of dharma, became standard in later legal literature.

We have a parallel use of "hearing" within the Buddhist epistemology of dharma emanating from "the words of the Buddha" (*buddhavacana*). All Buddhist scriptures begin with the words "Thus have I heard" (*eva may rutam*; in Pli *eva me sutam*), taking a teaching back to the very mouth of the Buddha. This hearing is the basis of Buddhist scriptures, much like *ruti* within the Brahmanical tradition, even though the import of "hearing" in the two differs widely. But the parallel use of the term in the two traditions of interpreting dharma is noteworthy.

The three major treatises of the first half of the first millennium C.E., those ascribed to Manu, Yajnavalkya, and Vishnu (chs. 4–5), do not contribute substantially to the issues surrounding the epistemology of dharma. Manu introduces several literary innovations that I will discuss in chapter 4, and on the issue of the sources of dharma Manu presents not three but five: "The root of dharma is the entire Veda, as also the recollection and conduct of those who know it; likewise the practice of good people, and satisfaction of oneself" (*MDh* 2.6). The first part of this statement is almost identical to Gautama's, but Manu then appends two other sources: practice (*cra*) of good people and satisfaction of oneself.[51] The latter is repeated by Yajnavalkya, but it had little impact on later discussions. The former, on the other hand, in the handy expression *sadcra* ("practice of good people"), became the standard third source of dharma; Yajnavalkya, for example, gives this while dropping the category "conduct of those who know the Veda." By substituting "good people" for "people (i.e., Brahmans) who know the Veda," Manu broadened the authoritative community. This was a smart move, because broad swaths of dharma, such as the dharma of villages, families, and corporations, cannot be located among just people who know the Veda, and "good people" connects it to the deeply moral connotation of dharma noted earlier in a passage from him.

Another significant development concerns the ambiguous term "recollection." Manu clears up this ambiguity with the straightforward statement: "'Scripture' (*ruti*) should be recognized as the Veda and 'recollection' (*smti*) as treatise on dharma" (*MDh* 2.10). In the early texts, as we have seen, recollection is presented as a source of dharma and thus external to the texts that the authors are engaged in composing. Manu, however, identifies recollection with these very texts on dharma and specifically with his own composition. Recollection that remained ambiguous in the zone between living and textualized is now firmly presented as text.

Manu, however, leaves the exact definition of “treatise on dharma” (*dharmastra* given in the singular) open. A couple of centuries later, Yajnavalkya (1.4–5; see ch. 5.1: #1) goes a step further by presenting a canonical list of twenty authors of such treatises.[52]

A major literary innovation in the three texts from this period also had an impact on the epistemology of dharma. All three locate their exposition within frame stories that narrate the historical circumstances in which the teachings were imparted. In all of them the content of the texts is presented as the authoritative teaching of an exalted and authoritative figure: Manu, the first human being and first king, who was the son of the creator god; Yajnavalkya, a Vedic seer who is the author of the white *Yajur Veda* and one of the main Upanisadic teachers; and the god Vishnu himself. So the authority and authenticity of the dharma taught in these texts are guaranteed by the very person imparting the instruction. Although in the texts of Manu and Yajnavalkya, after the introductory frame story, the author moves on to present the traditional epistemology of dharma, in the text of Vishnu this is dispensed with altogether. The sole epistemic source of dharma for the author of Vishnu’s text is the words of Vishnu himself.

The second phase in the epistemology of dharma is represented by the major commentaries composed between the fifth and ninth centuries C.E., presented in chapters 6–7. These commentators take as their basis the epistemology of dharma articulated in the treatises we have discussed. In particular, they all assume as a fundamental principle that Veda is the sole foundation of dharma, even though some, like Medhatithi, acknowledge that some kinds of dharma may be extra-Vedic. This basic principle is articulated at the very beginning of the foundational text of Vedic exegesis: “Dharma is something beneficial disclosed by a Vedic injunction” (*Mms Stra* 1.1.2; see ch. 6.1: #1). The commentators also take for granted that texts of recollection represented by the treatises on dharma are a legitimate epistemic source. Even though they accept proper conduct as a third epistemic source, their discussion focuses primarily on texts of recollection and their relationship to the Veda.

The two statements—Veda is the sole epistemic source of dharma, and texts of recollection constitute a valid epistemic source of dharma—create a serious theoretical and theological problem for our authors. The two, prima facie, appear to be contradictory. The easy solution is to ditch the second proposition and affirm unambiguously that the Veda is not only the primary but also the sole epistemic source of dharma; what is outside of the Veda, what is not found in the Veda, is not and cannot be dharma. This extreme conservative position is held by a hypothetical opponent[53] whose arguments are presented by all our authors. He could possibly be just a straw man, a foil used to present and then rebut his arguments and thereby buttress their own positions. Yet, I think this hypothetical opponent probably represented the real views of a segment of the thinkers in the tradition of Vedic exegesis and, perhaps, the science of dharma. I base this reasoning on, among others, Visvarupa’s commentary (ch. 7.2: #1), which reproduces an almost excessively long and detailed argument of the opponent that, in the printed text of the original Sanskrit, occupies over eight pages, including objections raised by his own opponents. However, this extreme position never established itself in the mainstream of either Vedic exegesis or the science of dharma.

So we are left with both horns of the dilemma: how can one hold on to both the Veda and the texts of recollection as valid epistemic sources of dharma? Two solutions, neither without serious problems and undesirable consequences, are offered.

The first, already proposed by Sabara (ch. 6.1: #2), posits that the Vedic texts extant today do not comprise the entire Veda; many texts have been irretrievably lost. It is the memory of the basic injunctions contained in these lost texts that is preserved in the texts of recollection. So, the latter are actually *based on* the Veda. This theory, therefore, posits two kinds of Vedic texts available to us. The first consist of texts actually recited in contemporary Vedic schools, referred to by the technical

term "perceived Vedic texts" (*pratyakaruti*). The second are Vedic texts whose existence must be inferred on the basis of injunctions given in texts of recollection, referred to as "inferred Vedic texts" (*anumitaruti*).

Yet, a couple of centuries after Sabara, his most famous subcommentator, Kumarila Bhatta, was quite troubled by this attempt to base texts of recollection on lost Vedic texts for both substantive and strategic reasons. As Larry McCrea (Forthcoming) has shown, Kumarila was a confirmed and thoroughgoing atheist who dismissed any kind of supernatural source for the origin and authority of the Veda, whether a supreme god or some sort of yogic insight or supernatural vision of Vedic seers. The Veda and the Vedic language have existed from eternity within the memory of a continuous and unbroken line of reciters. That is the only reason for the Veda's unique nature— without author, human or divine (*apaurueya*), eternal and infallible. The insertion of the possibility that some Vedic texts may have been lost, and that some parts of the line of reciters may have been broken, would seriously undermine his theory of Vedic authority. Of even greater concern to Kumarila—a concern expressed by later scholars such as Visvarupa and Medhatithi—is the strategic problems created by the theory of a lost Veda. Kumarila (ch. 6.2) says that such a theory will permit heterodox traditions, such as Buddhism, to claim that their own scriptures are likewise based on lost Vedic texts and, therefore, are as authoritative as Brahmanical texts of recollection.

> Now, with regard to those who acknowledge that texts of recollection, such as that of Manu, also have as their foundation lost Vedic branches, the Buddhists and others might easily say that their own texts are founded precisely on such Vedic branches. For, who is able to limit the scope of statements in lost Vedic branches to just those texts? Therefore, so long as some people have adhered to something for a certain length of time and it has gained renown, it may appear to have the same authority when one perceives it as having a foundation in lost Vedic branches, even when it may conflict with perceptible ones.

The opponent of Visvarupa I have already alluded to (ch. 7.2, #1) makes a similar point with regard to the problems created by the theory of a lost Veda. He further points out the implausibility that Vedic texts providing a foundation for texts of recollection would have become extinct, drawing attention to the fact that the hypothetically lost Vedic branches cannot be radically different from the extant branches and contain radically different injunctions: the *Maitrya* branch, he notes, is not radically different from the *Khaka*. In other words, given the vast number of texts preserved in different Vedic branches and their overall similarity in content, it is difficult to see how injunctions in texts of recollection are not supported by any of the extant texts. Medhatithi takes the same position as Visvarupa's opponent, and is more sarcastic. We must assume, he says, that *just those Vedic texts* that had all the injunctions now given in texts of recollection somehow became extinct!

Second, to obviate the drawbacks inherent in the theory of a lost Veda, Kumarila proposes a novel solution. He says that all the texts of recollection are based not on lost Vedas but on currently available Vedic texts. Then why can't we find them? Because, Kumarila contends, the Vedic branches are scattered across the vast country of India and no single individual is able to collect and study them all at any given moment. To help people find out the entirety of the Vedic dharma contained in the texts of all these branches, the authors of the texts of recollection presented the content not verbatim but in their own words and in a logical order. Thus, Kumarila proposes that there cannot be any contradiction between Vedic provisions and those of texts of recollection. So, *all* injunctions in the texts of recollection have an authority equal to that of explicit Vedic texts, and when two texts of recollection or a text of recollection and a Vedic text contradict each other, there is an option or, more likely, according to Kumarila, a simple inability on our part to understand the specific scope of each injunction.

Clearly, the same objection that Visvarupa's opponent raised with respect to the lost-Veda solution, namely that the lost branches cannot be totally different from those we have, could be leveled against Kumarila's "scattered Veda"; the parts unavailable to a particular individual could not be very different from those that are. Kumarila's solution to the central epistemological problem relating to dharma, moreover, was not universally accepted.

There is a divide, however, between the scholars representing Vedic exegesis and those belonging to the science of dharma. Although the two scholarly traditions are joined at the hip, their focus is different. Vedic exegesis has a narrow focus in its preoccupation with the Vedic ritual and its correct performance. Scholars in the science of dharma have somewhat different perspectives and interests: they have to deal not only with ritual matters but also and especially with the real-life situations of individuals and social groups, with differing customs and norms of different regions and groups, with court procedures and the resolution of disputes, and with the civil and criminal laws governing societies. Can one expect to find all these diverse laws in the Veda, which by definition is suprahistorical and cannot be seen to engage in temporally or geographically specific issues?

This epistemological conundrum is often left without direct engagement or resolution, but Medhatithi, possibly the greatest jurist of ancient India, provides a forthright answer (ch. 7.3: #6): not all of dharma is based on the Veda. In his comments on the duties of a king (*MDh* 7.1), he acknowledges that "the dharmas explained here have their roots in various epistemic sources; not all of them have the Veda as their root." He presents five possible answers to the relationship of texts of recollection to the Veda and finds them all wanting. Being one of the most refreshingly frank and honest scholars of the period, he is able to throw up his hands and admit defeat. His basic answer is that there *must be* some sort of connection between the texts of recollection and the Veda, but we have no idea what that connection might be! He concludes enigmatically: "There is no authority, however, to specify the particulars, nor is it useful." But after reviewing the five alternatives, he presents a clearer conclusion:

> Therefore, there certainly exists a connection between the Veda and Manu and others with respect to this issue (dharma). It is, however, impossible to determine the specific nature of that connection. When people who know the Veda have the doggedly resolute conviction that something must be carried out, then it is appropriate to assume that it is, indeed, rooted in the Veda and not rooted in something else, such as an error. In this way, an assumption comes to be made with respect to the cause that is in keeping with that conviction.

The third phase of the epistemology of dharma is represented by commentaries and legal digests produced in the second millennium C.E. With rare exceptions, the deep interest in this topic exhibited by the scholars of the earlier period is absent among those of the second millennium. Most frequently they simply give the epistemic sources of dharma found in the treatises on dharma with minimal comment and do not engage seriously with the many theoretical problems raised. The intellectual milieu was probably different, and new issues probably came to dominate the conversation. That dharma was based on the Veda and texts of recollection was taken as a given. Only Apararka (ch. 8.2: #2) takes seriously some of the issues tackled by his predecessors in the context of the rising importance of Hindu sects, both Vaishnava and Shaiva, and the prominence of their respective sacred texts. Buddhists and Buddhist sacred scriptures that loomed large in the discussions of the scholars of the second phase are, for the most part, absent. What occupies the authors are concrete issues concerning family law, such as adoption and inheritance, and in a special way legal procedure. We will see their minute attention to detail with respect to court proceedings in the second part of this sourcebook.

ACCOUNTING FOR CHANGE

We noted earlier the threefold division of Hart's secondary rules encompassing recognition, change, and adjudication. I have dealt with the first under epistemology of law in the preceding section. Rules of change identify the legitimate ways existing laws can be modified and annulled, or new laws enacted. Rules of change are, furthermore, integral to the epistemology of law; an individual or institution with the authority to enact new laws will also have the authority to change and annul existing laws. Without such an explicit agency, Indian epistemology of law needed to come up with hermeneutical principles to account for change.

As I wrote this, news reports said that a court in the state of Himachal Pradesh had outlawed the "barbaric slaughter of animals in Hindu temples." The court deemed the long tradition of sacrificing goats and sheep at the beginning of the winter season in the Himalayan region "cruel and barbaric." This is a modern example of the age-old dilemma of traditional practice conflicting with evolving moral codes and ethical sensibilities. As vegetarianism and an ethic based on the principle of noninjury (*ahis*) gained ground in ancient India, the basic ritual dharma of the Veda, killing animals in sacrifice, also became the object of serious criticism. Defenders of ritual killing resorted to such double talk as "killing in sacrifice is not killing." But such ethical dilemmas also generated more theoretical reflections.

Given the theory that law as dharma is derived from the Veda and that the Veda is eternal, it is theoretically impossible to (i) change any dharma; (ii) annul any dharma; or (iii) enact any new dharma. But human societies and their customs and mores inevitably change, whatever the theoreticians of dharma may say. Changes in customary laws within various communities reflecting these societal changes are imperceptibly introduced when those laws are unwritten. As laws and customs change, the older ones are simply forgotten by new generations, creating an appearance of immemorial custom. The dharma articulated in treatises on dharma, on the contrary, was written down, and the treatises were studied, commented on, transcribed in new manuscripts, and handed down from one generation to another. How do you introduce change into such immutable and inscribed laws? Or better, how do you theoretically manage and justify any such change? This is the challenge that faced the jurists and their scholastic techniques.

The Sanskrit jurists never directly address the issue of how one may actually change a rule of dharma. I say "directly" because some did deal with the issue by simply creating texts reflecting the changes they wanted: if you can't find them, just invent them. The extant corpus of texts composed over a period of a millennium or more also reflects the customs and mores of the times and places where they were composed. So, these texts contain rules that contradict each other and rules that are repugnant, or at least at variance with current practice and moral sensibilities. The labors of jurists were directed at resolving these two problems. The ingenious and innovative solutions that they came up with are instructive for the study of hermeneutical techniques of the Sanskrit tradition.

An early strategy is employed by Apastamba. He is concerned about the seemingly immoral acts performed by ancient seers and recorded in the Veda. In general, the practices of such great sages, just like the behavior of contemporary elite, would be a source of dharma and something to be emulated. How do you abrogate such a dharma and prevent people from following those ancient practices? Apastamba, of course, cannot abrogate such exemplary activities of ancient sages, but he does the next best thing: he makes such examples inapplicable to his own time. "Transgression of dharma is seen, as also violence, among men of ancient times. They incurred no sin on account of their extraordinary power. A man of later times who, observing that, does the same, perishes" (*pDh* 2.13.7–9).

Implicit in Apastamba's argument is that times change, and so do the capacities and strength of human beings.[54] At least by the time of Manu, that is the middle of the second century C.E., this

general argument was incorporated into the doctrine of the four world ages (*yuga*) that came to be applied to the functioning of dharma in society. As the life span, strength, and virtue of human beings declined in each subsequent world age, the dharma that governed their lives changed correspondingly. Manu enunciates this doctrine: “There is one set of dharmas in the Kta Age, another in the Tret, still another in the Dvpara, and a different set in Kali, in keeping with the progressive shortening taking place in each age” (*MDh* 1.85).

The treatise on dharma by Parasara, a text composed in the second half of the first millennium C .E., goes so far as to limit the authority of different treatises on dharma to specific ages, Parasara’s own composition being the one most appropriate for the current age: “In the Kta Age the dharmas proclaimed by Manu are said to be operative, in Tret those of Gautama, in Dvpara those of Sankha-Likhita, and in Kali those of Parasara” (*PrSm* 1.24).

The hermeneutical strategy based on the world ages permitted jurists to relegate rules of dharma that they found objectionable to a previous world age and thus make them inapplicable to contemporary times. For all intents and purposes, therefore, these rules are abrogated and rendered null and void. A verse ascribed to the treatise on dharma by Brihaspati (*BSm* 1.25.16) applies this principle to the ancient practice of levirate, where for the benefit of a deceased man, a child is fathered upon his widowed wife by his brother or close relative: “After prescribing levirate, however, Manu himself has forbidden it, given that it is impossible for anyone to carry it out according to rule because of the shortening created by world ages.”

The “shortening” here harks back to the verse of Manu cited above, and I think it refers both to the shortening of the human life span and the diminution of human capacities. This principle would be invoked frequently by later jurists to de facto annul any textual rule that they found objectionable.

Exactly when the doctrine of world ages came to be applied in this manner as a hermeneutical device to rules of dharma is unclear. It is not found in any text of recollection pre-dating Brihaspati, and the verse containing this principle is first cited by Apararka (on *YDhs* 1.68–69, p. 97), the twelfth-century commentator of Yajnavalkya. The principle of world ages is not invoked by the early ninth-century commentators such as Visvarupa and Medhatithi.[55] But that at least some jurists of that period did refer to it is indicated by the comments of Medhatithi, who clearly did not agree with this emergent view:

> This text of recollection on levirate and the special share of the eldest brother refer to a bygone era, and they are not to be followed in contemporary times, because texts of recollection have specific time limits—this is the view of some…. Therefore, texts of recollection on the special share of the eldest brother, on levirate, and on killing a cow are taught, but they are not to be performed.
>
> That is not smart, for we never hear this kind of time specificity anywhere. (Medh on *MDh* 9.112)

In the texts of the Middle Ages, such prohibitions are enunciated in the principle of “prohibitions in the Kali Age” (*kaliyugavarjya*), presenting long lists of things that are forbidden.[56]

There is also another principle, more significant I think as a hermeneutical strategy, invoked to set aside rules given in texts of recollection and even in the Vedas. According to this principle, a rule given in these texts not only can be but also must be set aside if it is abhorrent or repugnant to the world (*lokavidvia*), or even if it is contrary to the common practice of the world (*lokavirodha*). This turns on its head the old view that the dharma of a region or family can be followed if it *does not contradict the dharma articulated in the texts of recollection and the Veda.* Here the dharma

articulated in these very texts can be followed *only if it does not contradict the mores and sentiments of the world*. This principle permits changes to laws or dharma immutably articulated in these texts on the basis of the changes occurring in the actual practices and sensibilities of society.

This principle is clearly articulated by the twelfth-century commentator Vijnanesvara. Commenting on *Yajnavalkya* 2.117, he rejects, among other rules, the special share (*uddhra*) of the oldest brother in the partitioning of the ancestral property proposed by authorities such as Manu:

> This unequal partitioning is given in authoritative texts. Nevertheless, it should not be followed because it is repugnant to the world, given the prohibition: “Even an act of dharma should not be followed when it is not conducive to heaven and is repugnant to the world.” Likewise, even though there is the injunction: “One should prepare a big ox or a big goat for a learned Brahman” (*YDh* 1.109), it is not carried out because it is repugnant to the world. Also likewise, even though there is the injunction to sacrifice a cow—“One should sacrifice a tethered barren cow consecrated to Mitra and Varuna”[57]—it is not carried out, because it is repugnant to the world. It is, moreover, said: “Neither the law of levirate, nor even the killing of an animal tethered for sacrifice, nor also partitioning with a special share for the eldest remains in force today.”[58]

We have seen that passages in early texts of recollection support divergent viewpoints, indicating that individuals with those views produced them. Such passages can be found in major treatises on dharma from the early period, such as those of Manu, Yajnavalkya, and Narada. However, there was an explosive production of passages in prose and more frequently in verse from the second half of the first millennium and extending into the second millennium. These passages are either ascribed to various famous individuals of the past, such as Vyasa, Angiras, and Paithinasi, or are cited anonymously, often with the expression “another text of recollection” (*smtyantara*). If the presumed treatises from which these passages are cited ever existed, they are no longer extant. We must also consider the real possibility that such treatises never existed; the individual passages could have been fabricated for particular purposes. In the above passage of Vijnanesvara, he conveniently “finds” two verses from texts of recollection that support his own interpretation almost verbatim. These seem to be tailor-made—perhaps “fabricated” is the proper term—either by him or by one of his predecessors. So, there is the distinct possibility that one significant way of introducing change into dharma was to invent new discrete texts of recollection.

The legal fictions created by jurists, both ancient and medieval, to introduce novelty and change into the de jure unchangeable and eternal dharma are instructive with respect to the scholastic enterprise within the science of dharma. They also demonstrate the singular importance of customary laws, mostly unwritten, within the edifice of Indian jurisprudence that is theoretically supposed to be derived from and based on the immutable Veda.

DHARMA AND LEGAL PROCEDURE

The epistemological issues concerning law examined thus far are to some degree abstract, even though some of the theological positions represented attempts at enhancing the political and economic power of the Brahmanical community. At the other end of the spectrum of intellectual and practical issues relating to law is enforcement: how does society enforce the laws by which its members are expected to live? Every polity, of course, will have coercive enforcement mechanisms such as police, secret agents, and the military. But justice should be and should be seen to be done impartially and without arbitrariness in order for the majority of citizens to have faith in and to

participate in the process. That requires a judicial structure that the citizens at some level can understand and in which they can have confidence, especially in the fields of dispute resolution and remedies for injuries suffered. This is the area of secondary rules that Hart (2012) called rules of adjudication. In this area of jurisprudence, namely legal procedure called *vyavahra*, the ancient Indian jurists excelled.

The expansion of this topic of inquiry had its own impact on the more theoretical epistemological issues. What is law? and How do we come to know it? are issues of great relevance also to the administration of law in a court system. Thus, in the selections given in the second part of this sourcebook there is a creative tension between the theological stance that takes law as dharma to be univocal and derived from the Veda and the on-the-ground reality of the multiplicity of laws governing various segments of a given population, laws that had to be taken into account in resolving disputes and adjudicating lawsuits. So, in a sense, the very enforcing of laws by courts has a direct impact on the epistemology of law investigated in the first part of this sourcebook.

Yajnavalkya's division of his treatise (ch. 5.1) into good conduct, legal procedure, and expiation (*cra*, *vyavahra*, *pryacitta*) presented three broad subdomains of dharma. These can be understood as follows. The first gives the rules by which people should live their lives. The second gives the procedures to be followed when breaches of law occur or when individuals feel that their rights have been violated or others have caused injury to them or their property. The third, a much more religious arena, presents ways breaches of the rules of good conduct, that is, sins/crimes, can be repaired through acts and rituals of confession, repentance, and expiation. If legal procedure is one of the divisions of dharma, then, according to the epistemology spelled out by the authors we have examined, it has to be based on or derived from the Veda. Interestingly, to my knowledge, this point is never made in the legal treatises; they seem to accept implicitly that rules of legal procedure are humanly created and did change and develop over time. There is nothing in the Vedic texts that even remotely resembles these rules.

The Sanskrit term for legal procedure, *vyavahra*, has a long and broad semantic history.[59] At the broadest and least technical level, the term refers to any kind of social activity, especially everyday transactions between individuals or groups.[60] In a special way, it here refers to commercial transactions, such as buying and selling. Thus Kautilya defines it as commercial transactions: " *vyavahra* consists of trading in merchandise."[61] From this is derived a more specific meaning of legally binding social and commercial transactions, regarding which one can bring a lawsuit. Thus Kautilya defines some kinds of transactions, such as those entered into by dependents or people who are drunk or mentally incompetent, or those transacted in secret, as null and void (*A* 3.1.2, 13); they are technically non-*vyavahra*.

From these legal connotations are derived two technical meanings relating directly to law. The first is seen in Kautilya's *Treatise on Politics* (ch. 3.1): there, as already seen, *vyavahra* means a specific kind of law probably relating to social and commercial transactions.

The second meaning of *vyavahra* is lawsuits and, derivatively, rules of legal procedure associated with them. Perhaps this meaning is derived from the fact that most lawsuits may have involved commercial transactions, and the nonpayment of debts is always the first and paradigmatic area to be dealt with in legal procedure, and the rules of procedure are most frequently given within the context of debts. Narada (*M* 1.1), for example, at the very opening of his treatise says that in the beginning people were truthful and honest and there was no occasion for *vyavahra*, meaning legal disputes.

Under the category of legal procedure, treatises deal with two broad areas: court procedures, including the evaluation of evidence, and what have been called "titles of law" or what I would term "subjects of litigation." Although in this part of the source-book I will deal principally with the former, I want to provide here a synopsis of the latter, especially because the two areas are intertwined within the legal texts.

The term used for the different titles is *pada*, literally a step. Its earliest technical use is by Kautilya, who uses it in a compound with *vivda*, a dispute or lawsuit (*vivdapada*, *A* 3.16.38; 4.7.17). The more common technical term for a title of law is *vyavahrapada*, used by Manu (8.7), Yajnavalkya (2.5), Narada (*M* 1.30; 2.1; 3.1), and Brihaspati (1.1.121).

Manu is the first to classify these titles of law into eighteen categories, a number that was auspicious in ancient India. The actual number varies with different authors, but all except Kautilya, during whose time these titles were probably not formalized into a system, give the nonpayment of debts as the first. Below is the classification of these titles in four major legal texts in the order in which they are given in each.

These titles of law are also significant for legal procedure as such, because the first thing that a plaintiff has to present to court is the specific title under which he is filing the lawsuit. Later authors [62] maintain that a single lawsuit should deal with a plaint relating to only a single title. If more than one are involved, then there is the legal fault called a fallacious plaint.

THE ORGANIZATION OF TITLES OF LAW

Manu	*Arthaśāstra*	Yajnavalkya	Narada
1. *ṛṇādāna*: nonpayment of debt	*strīpuṃdharma**: law concering husband and wife	*ṛṇādāna*: nonpayment of debt	*ṛṇādāna*: nonpayment of debt
2. *nikṣepa*: deposits	*dāyavibhāga*: partition	*upanidhi*: deposits	*nikṣepa*: deposits
3. *asvāmivikraya*: sale without ownership	*vāstuvivāda*: property disputes	*dāyavibhāga*: partition	*saṃbhūyasamutthāna*: partnerships
4. *saṃbhūyasamutthāna*: partnerships	*samayasyānapākarma*: breach of contract	*sīmāvivāda*: boundary disputes	*dattāpradānika*: nondelivery of gifts
5. *dattasyānapākarma*: nondelivery of gifts	*ṛṇādāna*: nonpayment of debt	*svāmipālavivāda*: disputes between owners and herdsmen	*abhyupetyāśuśrūṣā*: breach of contract of service
6. *vetanādāna*: nonpayment of wages	*aupanidhikam*: deposits	*asvāmivikraya*: sale without ownership	*vetanasyānapākarma*: nonpayment of wages
7. *saṃvidvyatikrama*: breach of contract	*dāsakarmakarakalpa*: rules regarding slaves and workers	*dattāpradānika*: nondelivery of gifts	*asvāmivikraya*: sale without ownership
8. *krayavikrayānuśaya*: cancellation of sale or purchase	*saṃbhūyasamutthāna*: partnerships	*krītānuśaya*: cancellation of purchase	*vikrīyāsampradāna*: nondelivery after sale
9. *svāmipālavivāda*: disputes between owners and herdsmen	*vikrītakrītānuśaya*: cancellation of purchase or sale	*abhyupetyaśuśrūṣā*: breach of contract of service	*krītānuśaya*: cancellation of purchase
10. *sīmāvivāda*: boundary disputes	*dattasyānapākarma*: nondelivery of gifts	*saṃvidvyatikrama*: breach of contract	*samayasyānapākarma*: breach of conventions
11. *vākpāruṣya*: verbal assault	*asvāmivikraya*: sale without ownership	*vetanādāna*: nonpayment of wages	*kṣetrajavivāda*: land disputes
12. *daṇḍapāruṣya*: physical assault	*sāhasa*: violence	*dyūtasamāhvaya*: gambling and betting	*strīpuṃsaṃyoga*: relations between husband and wife
13. *steya*: theft	*vākpāruṣya*: verbal assault	*vākpāruṣya*: verbal assault	*dāyabhāga*: partition
14. *sāhasa*: violence	*daṇḍapāruṣya*: physical assault	*daṇḍapāruṣya*: physical assault	*sāhasa*: violence
15. *strīsaṃgrahaṇa*: sexual crimes against women	*dyūtasamāhvaya*: gambling and betting	*sāhasa*: violence	*vākpāruṣya*: verbal assault
16. *strīpuṃdharma*: law concerning husband and wife	*prakīrṇaka*: miscellaneous	*vikrīyāsaṃpradāna*: nondelivery after sale	*daṇḍapāruṣya*: physical assault
17. *vibhāga*: partition	*saṃbhūyasamutthāna*: partnerships	*strīsaṃgrahaṇa*: sexual crimes against women	*dyūtasamāhvaya*: gambling and betting
18. *dyūtasamāhvaya*: gambling and betting	*steya*: theft	*prakīrṇaka*: miscellaneous	*prakīrṇaka*: miscellaneous

*This term is not given in the *Arthastra*, but the topic is treated at the very outset.

The early aphoristic texts on dharma provide minimal information on legal procedure, other than to point out the kinds of evidence, such as witnesses, that can be presented to prove a case. Gautama gives the most detailed account, but even that does not contain a full description of how a court functioned in ancient India. Kautilya and Manu are the first to give extensive accounts with a developed technical vocabulary. But Yajnavalkya, Narada, and scholars who followed them created the most extensive and detailed descriptions of legal procedure followed in a court of law. These descriptions are further expanded and provided a rational structure in the medieval legal digests, such as that of Devanna Bhatta, who takes the reader from the initial filing of charges all the way to the final verdict.

Here, given the constraints of space, I want to give a synoptic description of legal procedure

developed by the authors from Kautilya to Narada. The multiple terms of the technical vocabulary used show that litigation carried out within a court is imagined as and compared to three other activities that have common elements: military battle, public debate, and logical syllogism. The battle metaphor is, of course, quite appropriate, because a case involves two combatants, an attacker and a defendant. The terms for plaint, plaintiff, and defendant—*abhiyoga*, *abhiyokt*, *abhiyukta* —are also used in the case of attack, attacker, and attacked within the context of war. Victory and defeat in a lawsuit are called *jaya* and *parjaya*, and the winner and loser are called *jayin* and *jita*, all military terms. These same terms can also be used in the case of a debate, with a challenge, challenger, and challenged. Corresponding to a debate is the very word for a lawsuit, *vda*, used also for a debate or argument. The plaintiff is *vdin* or *prvavdin*, and the defendant is *prativdin*. Further, the response of the defendant to the challenger's claim can be either agreement (*sapratipatti*) by saying that what the challenger has said is true (*satya*) or denial (*mithy*). Terminology borrowed from logic is also employed: *pratijñ* as proposition and plaint; *sdhya* as probandum and plaint; *hetu* and *sdhana* as proof and evidence; and *siddhi* and *siddha* as establishing what has to be proved. These three metaphors are always in the background as authors discuss the process of litigation and legal procedure.

Sources describe court procedure as having four feet—a common trope to indicate a perfect totality: plaint, plea, evidence, and verdict. The plaint is divided into two phases. First, the initial allegation brought before the court, given the technical term *vedana*, is recorded in writing on a chalkboard. The plaintiff is permitted then to edit and emend the charge up to the moment the defendant enters his plea. After emendation the final draft of the plaint, now called *bh*,[63] is written on a more permanent medium such as a palm leaf. After the court has accepted the allegation of the plaintiff as admissible, the defendant is summoned to court and given sufficient time to enter a plea. The plea is also written down, after which the litigants are not permitted to change their statements in any way. Sources give detailed descriptions of what a plaint and plea must contain before they can be considered legitimate; those deficient in any required feature are considered specious (*pakbhsa*, *uttarbhsa*) and thrown out of court (ch. 13.2: #5–6). The plea may be of four kinds: denial, admission, special plea, and prior judgment. Admission and denial of guilt are easily understood, and these are the simplest pleas. With admission, the case ends after the plea and, as our sources say, the procedure has only two feet. Special plea, technically called *pratyavaskandana*, consists of both the admission of the facts presented in the plaint and presenting a factor that would establish innocence. For example, to a plaint that the defendant had borrowed a particular sum of money, the special plea says that he did indeed borrow the amount, but has already paid it back. The charges should therefore be dismissed. The plea of prior judgment consists of the defendant telling the court that he was sued by the same plaintiff on the same charges previously, and there is a court judgment declaring him the winner.

The third phase of the trial is the presentation of evidence. But prior to that the court must decide whether the burden of proof falls on the defendant or the plaintiff. Of the four kinds of plea, admission does not require the presentation of evidence at all. In the plea of denial, the burden of proof falls on the plaintiff, who must prove the claims contained in the plaint, whereas in a special plea it falls on the defendant (ch 13.2: #7). Finally, if a prior judgment is claimed, the defendant must prove that such a judgment was declared by providing a document issued by the previous court or through witnesses. It is normally required that at the beginning of the trial the two litigants must give the court in writing the kinds of evidence they will present, and, in the case of witnesses, their names.

Four kinds of evidence were permitted in a court: witnesses, documents, enjoyment or possession, and oath or ordeal (ch. 13.2I: #8). The way these are presented in the sources offers a glimpse into the legal and socioeconomic history of the period. In sources pre-dating Yajnavalkya, that is, prior to about the fourth century C.E., the dominant form of evidence consisted of live

witnesses. Although a reference to documents with the somewhat unclear term *dea* occurs in Kautilya and Manu,[64] the common term for a document in later legal sources, *lekhya*, is absent. Yajnavalkya, who can be dated with some confidence to the Gupta period, presents a long and detailed discussion of legal documents and the factors that are required to make them valid in a court of law (ch. 11.1: #3). A century or so later, Narada states clearly that documentary evidence is superior to live witnesses and, in enumerating the various kinds of evidence, places documents before witnesses (ch. 11.2: #2). It appears that recording legal and commercial transactions in documents became commonplace during the Gupta period, and this is reflected in the discussion of court procedures by jurists.

The history of ordeals is similarly instructive. Manu writing in the second century C.E. refers to "oath" with the technical term *apatha*, but makes no direct reference to "ordeal"; the very term *divya*, so common in later literature for ordeal, is absent in the literature pre-dating Yajnavalkya, the first to introduce it as one of the four kinds of evidence accepted in a court of law.

After the presentation of evidence, the court considered the case presented by the two litigants and reached a verdict. Even though the verdict was pronounced by the chief judge, often called *prvivka*,[65] it appears likely that the actual weighing of the evidence and court deliberation leading to a verdict were carried out by the three assessors (*sabhya*). In the case of a miscarriage of justice, for example, it was the assessors who were subject to punishment by the king, not the judge himself.

After the verdict, any a punishment, fine, or payment of compensation to the victorious party ordered by the court was carried out. There was also a procedure of appeal to a higher court and to the king himself as the court of last appeal by the losing party if he or she felt that a miscarriage of justice, such as bias or bribery, had taken place. If such an appeal was sustained, the higher court might order a retrial (ch. 13.2: #10). The final act of the court was to issue to the victor a court document called *jayapatra*, briefly stating the facts of the case and the final verdict.

DEFINING AND DELIMITING LAW WHILE ADMINISTERING JUSTICE

The two sides of the coin of Hart's "secondary rules"—the rule of recognition dealt with under the epistemology of dharma, and the rule of adjudication dealt with under legal procedure—in significant ways open up definitional issues relating to law and dharma: What is dharma? And how do we know it? In these concluding comments I want to look at the ways the discussions of legal procedure illuminate the epistemology of dharma and bring it from its theoretical perch to the lived reality of people interacting with the judicial system.

The epistemological theory set out by ancient jurists presents the Veda as the unique source of dharma, supplemented in a variety of ways by texts of recollection and normative practices. Even though there are voices of dissent, such as that of Medhatithi, by and large the tradition buys into this theory. The lived reality of a courtroom where actual litigants or criminals are tried for a variety of offenses, however, is often far removed from those theological pronouncements. The authoritative texts presented as epistemic sources of dharma themselves advise the courts to take into account the varying customs, practices, and norms of the different communities to which the litigants belong. In reality, the diverse laws under which the litigants are tried and judged have little or nothing to do with the Veda or texts inspired by it. The courts, then, assume a plurality of laws whose origins are diverse, while subscribing to the theory of the Vedic origin of a unique Brahmanical dharma.

Already a century or so before the Common Era, Baudhayana pointed out five distinctive practices peculiar to north India and five to south India (ch. 2.2: #3). Those distinctive to the north are: selling wool, drinking liquor, trafficking in animals with incisor teeth in both jaws, being a professional soldier, and seafaring. Those distinctive to the south are: eating in the company of uninitiated persons or of one's wife, eating stale food, and marrying the daughter of one's mother's

brother or of one's father's sister (cross-cousin marriage). Baudhayana goes on to state that these practices are lawful only in that particular region; if one follows the practices of the south in the north or of the north in the south, one commits an offense. But dissenting voices are heard: Baudhayana cites the view of Gautama, for example, who sticks to the conservative position, saying that one should pay no heed to such diverse practices because they are opposed to the Vedic tradition. The Veda is not only transhistorical, it is also transregional: the Vedic dharma respects neither time nor geography and is valid everywhere and at all times. We have already seen in the section on accounting for change the problems this created when customs and moral sensibilities changed and how creative hermeneutics managed to alter the unchangeable Vedic dharma.

A noteworthy feature in the discussions of the regional variations of dharma by both Bharuci and Medhatithi is the use of the technical term *vyavasth,* which I have translated as "norm." This usage has implications for the epistemology of dharma. Little serious work has been done on this legal concept except in its more common meaning of a legal opinion or decision.[66] It is, however, a term both distinct from and falling within the semantic compass of dharma. Thus Bharuci (ch. 12.1: #1) equates the "norms based on the practices of the region" with "the dharma prevalent among farmers, traders, herdsmen, and the like." Likewise, at the end of his commentary on Manu 8.41 (ch. 12.1: #2), after discussing the dharma of castes, guilds, and the like, Bharuci states that if the king refused to enforce such dharma, there would be the demolition of norms, thus presenting a close association of dharma and norm.

Medhatithi deals with norms (*vyavasth*) in greater detail and more explicitly. In the most explicit definition of the term, he equates it with dharma: "Dharma is a norm established by authoritative text, reasoning, or locality."[67] He further states that "the eternal dharma consists of norms that do not derive from recent times."[68] He also gives examples, presenting two customs, one prevalent in the south and one in the north, both of which are norms and could be called regional dharma (see ch. 12.2: #1):

> Among some people of the south, a sonless wife, when her husband has died, goes up to the pillar of the court. When she has come up to it, and she has been examined by the court officials and found to be of good character, she obtains immediately after that her inheritance in the presence of relatives belonging to the same ancestry. Likewise, in the north when there is a marriage proposal for a girl, if a meal is given to the suitor then she is pledged to him even if one does not say the words: "I give her to you." (on *MDh* 8.3)

Later, while discussing the dharma of families (on *MDh* 8.41; ch. 12.2: #3), he provides a telling example. Here the dharma is actually instituted by an ancestor of the family:

> "The dharmas of families"—a family is a lineage. In such a lineage, there is a dharma that has been instituted by an ancestor of renowned glory: "When anyone born in our lineage obtains wealth from anywhere, he shall not use it for some other purpose without first making a gift to Brahmans"—these and others like it are dharmas.

The same term is used with regard to the dharma of guilds and associations (*reidharma*) in his comments on *MDh* 8.41. Here too Medhatithi provides an example:

> There are people following a single profession, such as traders, artisans, moneylenders, and carters. Their dharmas are "the dharmas of guilds." For example, some leaders of traders

present the king's share verbally fixed: "We make our living by this trade. This is the king's share due to you from us, irrespective of whether our profits are more or less." When the king has agreed to this, to obtain copious profits from their trade they create norms (*vyavasth*
) among themselves, norms that are not detrimental to the kingdom: "This commodity should not be sold for this length of time"; "This fine is earmarked for the king's sojourn here or for a festival of the deity." In this case, if someone violates this, he should be punished as a man violating in this manner the dharma of the guild.

Here the norms (*vyavasth*) that the leaders of the guild created are called in the last sentence "the dharma of the guild."

Then he presents another norm, which is actually a verse from Narada (1.125), and thus a text of recollection. This deals with the manner in which documents and witnesses should be evaluated. According to Medhatithi, this verse simply reiterates something from worldly practice and is authoritative on that basis alone; it is not based on the Veda. He even calls into question the validity of the rule.

Although the semantic history of "norm" (*vyavasth*) has still to be written, it is clear that at least some aspects of its meaning coincide with dharma and add to our understanding of dharma and its epistemology. The rules falling under "norm" are clearly human; Medhatithi calls them *laukika*, worldly, to distinguish them from *vaidika* or Vedic rules.

The medieval jurist Devanna Bhatta (ch. 13.2: #2) gives a revealing example of a practice recognized as law within a particular tribal community called Abhira. A man of this community is brought before a court accused of committing adultery, and there are witnesses to the crime. The accused admits that the facts presented to the court are indeed true. He, however, pleads not guilty based on the customary law of his own community that permits such sexual practices: "What the witnesses have said is true. Nevertheless, I should not be punished, because I did this on the strength of custom. And the king has recorded this in the book." The man is exonerated.

Legal epistemology using hermeneutical strategies and principles honed in the school of Vedic exegesis managed to hold on, however uncomfortably, to the two horns of the dilemma already noted. On the one hand, dharma is revealed in Vedic injunctions and in texts of recollection and normative practices based on the Veda. On the other hand, courts and jurists had to contend with both the diversity of laws prevalent in different regions and groups and the inevitable social, political, economic, and religious changes bringing with them new customs, rituals, and moral sensibilities. Although necessarily brief and incomplete, this sourcebook offers a survey of the intellectual labor of scholars and jurists down the centuries who contemplated and directly dealt with these profound legal, social, and religious issues.

PART ONE

Nature and Epistemology of Law

In this first part of the sourcebook, I take up the issues arising from what Hart (2012) called the rules of recognition and change: broadly speaking, the epistemological issues relating to law and dharma. In the following eight chapters are extracts from twenty-one authors spanning about one thousand years, from 300 B.C.E. to 1300 C.E. These authors represent four intellectual traditions: the science of dharma, Sanskrit grammar, political science, and Vedic exegesis. Although writing from different perspectives, all deal with dharma and its epistemology and shed light on scholarly engagement and debates surrounding this significant issue in the intellectual history of classical India.

The authors presented in the first five chapters, with the exception of the grammarian Patanjali and the political scientist Kautilya, are considered by the later tradition of the science of dharma to have written authoritative treatises falling with the scriptural category of "texts of recollection" (*smti*). Even though the authors themselves engage in vigorous debate and defend particular positions with respect to the epistemological question, their own works have become scripturally authoritative and the basis for the scholarly explorations and debates of later authors and commentators presented in the three subsequent chapters.

CHAPTER ONE

Early Thinkers

The manner in which epistemological issues relating to dharma were raised and resolved changed with time and theological developments. I take up for examination first the two earliest authors dealing with dharma: Apastamba, the author of the earliest extant treatise on dharma, and Patanjali, whose extensive *Great Commentary* (*mahbhya*) on the Sanskrit grammar of Panini is a mine of cultural information.

Patanjali draws an interesting and significant parallel between correct Sanskrit and proper dharma, a parallel pursued by authors dealt with in the second chapter. For him, there are two distinct and parallel domains of correct Sanskrit, the Vedic language (*vaidika*) and contemporary Sanskrit usage (*laukika*). The first is found in the extant Vedic texts and the second in the speech of a special group of Brahmans whom he identifies as *ia,* the cultured elite. The dual domains of dharma in Apastamba parallel the two domains of Sanskrit in Patanjali. For Apastamba, dharma can be found in the Vedas (*vaidika*) and in the contemporary practices and customs of living communities (*laukika*). This dual domain of dharma will be subjected to critique and rejection in the later phases of the science of dharma, discussed in subsequent chapters.

1.1 APASTAMBA (LATE THIRD CENTURY B.C.E.)

Of the extant literature of the science of dharma, Apastamba's *Aphoristic Text on Dharma* is clearly the oldest. Apastamba can be dated roughly to the late third century B.C.E.[1] He is unaware, for example, of basic ideas prominent in the literature from the second century B.C.E., such as the concept of the twice-born (*dvija*) and the sacred geography of the Arya land (*ryvarta*). The former, absent also in Patanjali's treatise, refers to those upper-class males who have undergone Vedic initiation, viewed as the second birth of the initiate. The word appears for the first time in Gautama's *Aphoristic Text on Dharma*, while the concept of a sacred geography is probably an innovation introduced by Patanjali himself.

As noted in the introduction, in Apastamba's text we have the first available organized presentation of the science of dharma. Its structure and the topics it covers became standard in later treatises on dharma. Even though it is likely that other texts of this genre predated Apastamba, his is the earliest discussion of the nature and epistemology of dharma within the science of dharma that we possess. The differences between his views and those of his successors, such as Gautama and Baudhayana, are significant for the early history of dharma. The liberal and broadminded views of Apastamba, such as the ability to learn dharma from women and people of lower castes, would be abandoned by later authors.

Apastamba's *Aphoristic Text on Dharma* forms part of his voluminous *Aphoristic Ritual Text* (*kalpastra*) containing thirty books. The first twenty-four comprise the *Aphoristic Text on Vedic*

Ritual. Books 25–26 contain the collection of ritual formulas to be used in domestic rites, and book 27 contains the *Aphoristic Text on Domestic Ritual*. The section on dharma occupies books 28–29, and the final book contains a treatise on principles of geometry needed for the Vedic sacrifice. Apastamba belongs to the Taittirya branch of the *Black Yajur Veda*. Opinion is divided as to whether the entire *Aphoristic Ritual Text* was composed by a single individual (Kane I: 54). It appears, however, that at least the sections on the domestic ritual and dharma were composed by the same author. The *Aphoristic Ritual Text* of Apastamba has been preserved better than most.

Of the several ancient commentaries on his *Aphoristic Text on Dharma*, only one survives, that of Haradatta. Haradatta was probably a South Indian, and Kane dates him to 1100–1300 C.E. Haradatta is an excellent commentator and a close reader of the text. He records numerous variants that he found in the sources, possibly both oral and manuscript, that he used and comments on difficult or unusual readings he encountered (see Olivelle 1999).

1

Now, then, we shall explain the dharmas derived from agreed-upon normative practice. The authority is the agreement of those who know dharma; and the Vedas. (1.1.1–3)

2

Let him not become vexed or easily deceived by the pronouncements of hypocrites, crooks, infidels, and fools. Dharma and adharma do not go around saying, “Here we are!” Nor do gods and Gandharvas, or the ancestors, declare: “This is dharma. This is adharma.” An activity that Aryas praise when it is being carried out is dharma, and what they deplore is adharma. He should model his conduct after that which is unanimously approved in all regions by Aryas who have been properly trained, and who are elderly, self-possessed, not greedy, and not deceitful. In this way he wins both worlds. (1.20.5–9)

3

The knowledge found among women and Shudras forms the consummation. They teach that it is a residual portion of the *Atharva Veda*.

It is difficult to gain mastery of dharma by means of scriptures handed down, but by acting according to the markers, one can master it. The marker in this case is as follows. He should model his conduct after that which is unanimously approved in all regions by Aryas who have been properly trained, and who are elderly, self-possessed, not greedy, and not deceitful. In this way he wins both worlds.[2]

According to some, one should learn the remaining dharmas from women and people of all social classes. (2.29.11–15)

4

With respect to matters other than these, one should act according to the pronouncement of legal assemblies.[3] (1.11.38)

5

Injunctions are given in the *brhmaa*s. Of these, the lost readings are inferred from usage. When, however, something is undertaken because of the pleasure derived from it, then there is no inference

of a scriptural text. A man who follows such a practice prepares himself for hell. (1.12.10–12)

6

The teacher, moreover, should not give a student leftover food that is forbidden to him by Vedic texts, such as spices, salt, honey, and meat. This explains also the other restrictions, for a Vedic text is stronger than a practice from which an inference is made. We notice, moreover, a motive for performing it, for one derives pleasure from it. (1.4.5–10)

7

It is the firm conclusion of the most eminent scholars of the triple Veda, however, that the Vedas are the authority. They consider that the rites prescribed therein using rice, barley, animals, ghee, milk, and potsherds, involving the participation of the wife, and accompanied by the loud and soft recitations of mantras, must be performed, and that any practice opposed to those rites is devoid of authority. (2.23.10)

8

Transgression of dharma is seen, as also violence, among men of ancient times. They incurred no sin on account of their extraordinary power. A man of later times who, observing that, does the same, perishes.[4]

Giving away and the dharma of selling one's offspring are not recognized. At a marriage, a voluntary gift to the bride's father for the sake of dharma is mentioned in the Veda: "Therefore, one hundred cows together with a chariot should be given to the bride's father. The latter should repudiate that gift." The term "sale" used in this connection is only a figure of speech, for their union is brought about through dharma.[5] (2.13.7–11)

According to some, the eldest son is the sole heir. In a particular region, gold, black cattle, and black produce of the earth[6] belong to the eldest son. The chariot and the household furniture belong to the father, while the jewelry and the money given by her relatives belong to the wife, maintain others. That is forbidden by the scriptures, for the Veda states without making any special allowance, "Manu divided his estate among his sons." (*TS* 3.1.9.4)

However, we also find in the Veda the statement that posits a single heir: "Therefore, they invest the eldest son with wealth." (*TS* 2.5.2.7)

Experts in exegesis, however, say that such statements are not injunctions but only reiterate common facts, as for example: "Therefore, among domestic animals, goats and sheep range together"; "Therefore, the face of a bath graduate appears to sparkle"; and "Therefore, a male goat and a Vedic scholar display the greatest desire for a mate."[7] Indeed, all sons who live righteously are entitled to inherit. He should, however, disinherit a son who uses the wealth in adharmic ways, even if he is the eldest. (2.14.6–15)

That[8] explains dharmas of regions and families. (2.15.1)

9

“A man should not introduce to outsiders the woman who occupies his lineage, for a wife is given to the family”—so they admonish.[9] That is now forbidden because of the weakness of the senses, for with respect to the husband, all are equally outsiders. When this is violated, both husband and wife will undoubtedly end up in hell, for the happiness resulting from following this restriction is far greater than that resulting from offspring obtained in this manner. (2.27.2–7)

10

Let him not follow the dharmas for the sake of worldly benefits, for then they produce no fruit at harvest time. It is like this. A man plants a mango tree to get fruit, but in addition he obtains also shade and fragrance. In like manner, when a man follows dharma, he obtains, in addition, other benefits. Even if he does not obtain them, at least no harm is done to dharma. (1.20.1–4)

People of all classes enjoy supreme and boundless happiness when they follow the dharma specific to them. Then, upon a man’s return to earth, by virtue of the residue of his merits, he obtains a high birth, a beautiful body, a fine complexion, strength, intelligence, wisdom, wealth, and an inclination to follow dharma. So, going around like a wheel, he remains happy in both worlds. This is similar to the way the seeds of plants and trees, when they are sown on a well-plowed field, increase their fruit. (2.2.2–4)

By following the dharma a person of a lower class advances in the subsequent birth to the next higher class, whereas by following adharma a person of a higher class descends in the subsequent birth to the next lower class. (2.11.10–11)

1.2 PATANJALI (MID-SECOND CENTURY B.C.E.)[10]

Patanjali is known for his *Great Commentary* (*mahbhya*) on his predecessor Katyayana’s gloss on the Sanskrit grammar of Panini. These three early grammarians are viewed by the later tradition as the “three sages” (*munitraya*), the most authoritative authors in the grammatical tradition. Precisely because he is a grammarian and not a writer on dharma, Patanjali’s statements, often *obiter dicta* given as examples to illustrate grammatical rules, offer precious insight into the scholarly thinking of his time with respect to dharma and the nature of the enterprise of the science of dharma. That he knew the literature of the science of dharma is clear; it is indicated by his reference to the authors of aphoristic texts on dharma (*dharmastrakra*) and to the treatises on dharma as such.[11]

As already noted in the introduction, there is a close parallel between the epistemology of Sanskrit (How do we come to know correct Sanskrit?) and the epistemology of dharma (How do we come to know the right dharma?). Some of the strategies that Patanjali uses, such as the sacred geography called “Arya land” and the authority of a special group of people called “cultured elites” (*ia*), would be incorporated by later writers on dharma. As Deshpande (2009) has shown, for Patanjali “cultured elites” were contemporary human beings who learned and spoke correct Sanskrit without having to depend on grammatical texts such as that of Panini. In fact, grammars merely describe this living Sanskrit among the cultured elite. Seven centuries or so later, the grammarian Bhartrhari views “cultured elites” as people from an idealized bygone era, and for him the greatest “cultured elite” is Patanjali himself. The grammatical texts alone have authority with regard to correct Sanskrit; there is no contemporary community of correct Sanskrit speakers. Bhartrhari also calls the treatises of Panini and Patanjali “texts of recollection” (*smti*), the same term used within the science of dharma to characterize ancient treatises on dharma. However, even though Sanskrit grammar departed from using living communities of speakers as models of and for correct Sanskrit,

the science of dharma continued to posit such living communities, whose customs under the category of "correct practice" (*cra*) continued to be recognized epistemic sources of dharma. Yet we can see a clear shift in emphasis from community practices to treatises on dharma even within the science of dharma itself.

1

One should not kill a Brahman.

One should not drink liquor.[12] (6.1.84 [III: 57]; 1.2.64 [I: 242–43])

A village fowl is not to be eaten; a village pig is not to be eaten. (1.1.1 [I: 5, 8])

The five five-nailed animals may be eaten.[13] (1.1.1 [I: 5])

A Brahman should set up the fires in the spring.

A Brahman should undergo Vedic initiation in the eighth year from conception.

He should sip three times with water reaching up to his heart. (6.1.84 [III: 57])

A young Brahman should stand up to greet.

For when an older person comes near, the life breaths of a younger person rise up, and as he rises up and greets him, he retrieves them.[14] (6.1.84 [III: 57–58])

2

And by whom are they taught?[15]

By the cultured elite.

And who are the cultured elite?

The grammarians.

How is that?

Correct linguistic usage presupposes the science of grammar,[16] and grammarians are the ones who know the science of grammar.

If, then, correct linguistic usage presupposes the science of grammar, and the science of grammar presupposes correct linguistic usage, it becomes a circular argument. And circular arguments are invalid.

All right, then, they are defined by their dwelling place and normative practice. And this normative practice is found only in the Arya land.

And what is the Arya land?

It is to the east of Adarsa, west of Kalaka forest, south of the Himalayas, and north of Pariyatra.[17] Brahmans within this dwelling place of the Aryas—Brahmans who possess grain sufficient to fill a jar, who are without greed, who act without tangible motives, and who within a short period completely master some branch of learning— those venerable ones are the cultured elite. (6.3.109 [III: 174])

3

Given that in the use of words the meaning communicated is based on the worldly linguistic usage, a restriction pertaining to dharma is made by the authoritative treatise, as found in worldly and Vedic

precepts. (Katyayana's gloss)

Now, in the world it is said: "A village fowl is not to be eaten; a village pig is not to be eaten." And surely a man takes something that is to be eaten in order to allay his hunger. And he is able to allay his hunger even with such things as dog meat. With reference to this, the restriction is made: "This is to be eaten, and this is not to be eaten."

Likewise, one resorts to women because of sexual urge. The sexual urge is equally assuaged both with a woman with whom sexual relations are permitted and with a woman with whom sexual relations are forbidden. With reference to this, the restriction is made: "This is a woman with whom sexual relations are permitted, and this is a woman with whom sexual relations are forbidden."…

Likewise, here also, while the meaning can be communicated equally well with both a proper word and an improper word, a restriction pertaining to dharma is made: "The meaning should be communicated only with a proper word and not with an improper word."

When it is done in this manner, it promotes felicity. (1.1.1 [I: 8])

CHAPTER TWO

Later Aphoristic Texts on Dharma

Three texts within the literary tradition of the science of dharma and written in aphoristic prose fall between the texts composed by Apastamba in the third century B.C.E. and by Manu in the second century C.E. They are the aphoristic texts on dharma ascribed to Gautama, Baudhayana, and Vasistha. As already noted, from citations and references in the extant literature we know that numerous other similar texts were composed during these centuries, but none of them is extant.[1]

2.1 GAUTAMA (LATE SECOND CENTURY B.C.E.)

Gautama's *Aphoristic Text on Dharma* is the earliest of the three documents examined here. Gautama's reflections, as I have already noted in the introduction, indicate several new and significant directions in the conception and epistemology of law, directions further developed by Manu a few centuries later. Gautama, for example, is the first to highlight the centrality of the Veda as the source of dharma and the first to invoke the category of recollection within the context of the epistemology of dharma. More than any of the other early authors, he also focuses on courts and legal procedure, presenting some of the earliest information on this topic.

The text of Gautama has come down as a separate treatise without any connection to a larger aphoristic ritual text. Traditionally, Gautama has been associated with the Smaveda, as attested to by Kumarila (on *PMS* 1.3.15). This connection is supported by, among other factors, the fact that the twenty-sixth chapter on penance is taken from the *Smavidhna Brhmaa* belonging to the Smaveda. Gautama also refers to the five great utterances (*vyhti*; *GDh* 1.51; 25.8), which, as Visvarupa (on *YDh* 1.15) explains, is a special feature of the Smaveda.

This text is unique in that it does not contain a single verse; all other aphoristic texts on dharma contain verses either as part of the composition or as citations. Gautama appears to have deliberately emulated the "aphoristic style" of the grammarian Panini; his sentences are brief and pithy. There are two extant commentaries on Gautama, by Maskarin and Haradatta. Maskarin can be assigned to 900–1000 C.E. and is therefore older than Haradatta, to whom are ascribed commentaries on both Gautama and Apastamba, and is assigned to the twelfth–thirteenth centuries C.E. It appears that Haradatta in commenting on Gautama has made extensive use of Maskarin's commentary, a usage that would amount to plagiarism if done today. A close comparison of Haradatta's commentary on Gautama, however, reveals that it is unlikely to have been authored by the same Haradatta who wrote the commentary on Apastamba. The commentary on Gautama does not give variants and rarely discusses difficult readings; on the whole, it does not measure up to the standard set by the commentary on Apastamba (see Olivelle 1999).

Veda is the root of dharma, as also the recollection and conduct of those who know it.[2]

Transgression of dharma is seen, as also violence, in great men. They are not the root of dharma, however, as they have a purpose that is seen and on account of the lack of power of those listed later.[3]

When rules of equal power are in conflict with each other, there is an option. (1.1–4)

There is, however, only a single order of life, teachers maintain, because the householder's state is enjoined in perceptible Vedic texts. (3.36)

2

The king's administration of law shall be based on the Veda, treatises on dharma, Vedic supplements, subsidiary Vedas, and Purana.[4] The dharmas of regions, castes, and families that are not in conflict with the sacred scriptures are authoritative.

Farmers, merchants, herdsmen, moneylenders, and artisans exercise authority in their respective groups. The king should render a legal decision after he has ascertained the facts from authoritative persons of each group. (11.19–22)

3

With respect to unknown matters, one should do what is commended by a minimum of ten persons who are cultured elite, skilled in reasoning,[5] and free from greed. A legal assembly is said to consist of a minimum of ten members—four who have mastered the four Vedas; three belonging to the three orders of life enumerated first;[6] and three who know three different treatises on dharma. When these are unavailable, however, in a doubtful case one should do what is told by someone who is learned, knows the Veda, and is a cultured elite, because such a man is incapable of hurting or favoring creatures. (28.48–51)

4

People belonging to the different classes and orders of life who are steadfastly devoted to the dharma proper to them enjoy the fruits of their deeds after death. Then, with a residue of those fruits, they take birth again in a prosperous region, a high caste, and a distinguished family, with a handsome body, long life, deep learning, and virtuous conduct, and with great wealth, happiness, and intelligence. Those who act in a contrary manner disperse in every direction and perish. The teacher's advice and the king's punishment protect them; therefore, one should never belittle the king or the teacher. (11.29–32)

2.2 BAUDHAYANA (EARLY FIRST CENTURY B.C.E.)

The *Aphoristic Text on Dharma* of Baudhayana, like that of Apastamba, forms part of Baudhayana's *Aphoristic Ritual Text* (*kalpastra*). Unlike Apastamba's, however, the texts of Baudhayana have been tampered with repeatedly and contain numerous additions and interpolations. The extent and structure of the entire *Aphoristic Ritual Text* are not altogether clear. The last four books contain the text on dharma. The only commentary is by one Govindasvamin, whose date is uncertain, but he

cannot be very ancient. Baudhayana's text on dharma has undergone repeated revisions, and only the first two books are considered original. I date these original books to the middle of the first century B .C.E.

In selection #1, Baudhayana presents several advances over Gautama in thinking about the epistemology of dharma. He follows Gautama in highlighting the preeminence of the Veda, but in using the somewhat ambiguous term *prativedam* (corresponding to or in each Veda) he seems to be following the general view that people belonging to various Vedic branches (*kh*) should follow the injunctions within their respective branches.[7] Although Gautama also uses the term "recollection" (*smti*), it probably refers to the recollection of normative traditions rather than to textual forms of such traditions. Baudhayana, however, in using the derivative term *smrta* (what is related to or found in a text of recollection") clearly refers to a text,[8] which he calls "second," the first time we see such an explicit count of the epistemic sources. Thus we locate the two principal sources of dharma in actual texts: the Veda and the text of recollection.

Then he presents a third epistemic source of dharma, calling it *ia-gama.* This is the first use of *ia* (cultured elite) within the discussion of legal epistemology, and, along with the companion term *ryvarta* (Arya land), it was probably borrowed from Patanjali (ch. 1.2), one of the earliest to use these novel concepts. The term *gama* is somewhat ambiguous; it can mean the norms and traditions that have come down from generation to generation, even though in later usage it often refers to various kinds of scriptural texts. Here it is probably used in the same sense as *cra* (practice) in Apastamba, the normative behavior and traditions of a community. However, at *BDh* 1.2.8 we have the expression *iasmti,* where *smti* appears to have a meaning similar to its usage by Gautama, namely, recollections of the cultured elite. This example shows that *smti* was probably still a fluid concept, being used for both textual and oral forms of tradition.

Next, Baudhayana gives a definition of the cultured elite reminiscent of Patanjali's, without, however, a direct link to a sacred geography, which Baudhayana presents separately (see selection #4) as a region whose practices (here he uses the term *cra*) are authoritative. The verse provides interesting insights into Baudhayana's view on the role of these cultured elites with regard to the epistemology of law. They know the Veda and the subsidiary Vedic texts, and most important, they know how to draw inferences[9] from the extant Veda; these inferences probably related to extracting dharma from the Veda, while providing proof texts from the extant Veda to buttress their arguments. These are, then, the Vedic exegetes now acting as the authoritative guardians of law.

In selection #2, Baudhayana turns to a situation when none of the above three ways of knowing dharma is available. Here he picks up a theme already mentioned very briefly by Apastamba (ch. 1.1: #4) and more fully by Gautama (ch. 2.1: #3), that is, the institution of legal assembly (*pariad*). Baudhayana, however, is the first to use this institution explicitly within the context of his discussion of the sources of law. The issues on which such a deliberative body would pronounce, however, are not spelled out clearly, even though one principal duty appears to be the determination of appropriate penances for offenses (1.1.15).

We have already seen (ch. 1.1: #8) that dharma is distinguished according to specific regions and groups (caste, family). In selection #3, Baudhayana, for the first time in the legal literature, presents a detailed account of differing practices of two broadly defined regions, the south and the north. His view appears to be that these practices, even though they are at variance with common dharma or Vedic injunctions, are legitimate within their respective regions. But they do not have common validity and therefore cannot be practiced outside those regions. This restricted authority is called *deaprmyam* (1.2.6), that is, their legal authority (or, better, their validity as an epistemic source of law) is restricted to that specific region. This is a geographical variation of the common rule that people of previous ages behaved in ways that appear abhorrent by contemporary standards, yet that behavior is justified on the grounds that dharma is different in different world ages (see ch. 1.1: #8). Baudhayana says, however, that this view is explicitly rejected by Gautama because such practices

are contrary to the normative tradition of the cultured elite. Actually we do find a statement in the extant text of Gautama (ch. 2.1: #2) that appears to support this position.

Within the context of his discussion of regions, Baudhayana, in selection #4, turns to the topic of the Arya land (*ryvarta*) that was first introduced by the grammarian Patanjali. Unlike the specific dharmas of the south and the north and, implicitly, of other regions, the practices of this region have universal authority; they constitute dharma for all. The definition of the Arya land is the same as the one provided by Patanjali, but Baudhayana presents an alternate definition: the region between the Ganges and the Yamuna, which in some ways restricts the region. The quotation from Bhallavins further complicates matters by bringing in another defining characteristic: the region where the black antelope roams naturally, picked up later by Manu (ch. 4: #4). Beyond defining the sacred land, Baudhayana also identifies outlying regions that are evil and should not be visited by those wishing to abide by dharma.

1

Dharma is taught in each Veda. In accordance with that, we will explain it. What is given in texts of recollection is the second. The tradition of the cultured elite is the third.

Now, the cultured elite are those who are devoid of envy and without pride, who possess just a jarful of grain and are without covetousness, and who are free of hypocrisy, arrogance, greed, folly, and anger.

> The cultured elite are those who have studied the Veda together with its amplifications[10] in accordance with dharma, know how to draw inferences from them, and adduce Vedic texts as perceptible proof. (1.1.1–6)

2

In the absence of these,[11] there should be a legal assembly with a minimum of ten members. Now, they also quote:

> Four men, each proficient in one of the four Vedas; one exegete; one who knows the Vedic supplements; one scholar of treatises on dharma; and three Brahmans belonging to three orders of life[12]—these constitute a legal assembly with a minimum of ten members.
>
> Or they could be five or three; or just one, if he is of unimpeachable conduct, may explain dharma, but not others, be they in their thousands.
>
> A Brahman who does not recite the Veda is like an elephant made of wood or a deer made of leather: all three are so only in name.
>
> When fools, befuddled by darkness, make a pronouncement without knowing dharma, that sin, compounded a hundredfold, engulfs those who proclaim it.
>
> The path of dharma that has many gates is narrow and difficult to follow. When there is a doubt, therefore, one man, however learned, should not pronounce on it.
>
> When twice-born men, riding in the chariot of treatises on dharma and wielding the sword of the Veda, make a pronouncement even in jest, that is the highest dharma: so states a text of recollection.
>
> As the wind and sun make the water collected on a stone disappear, so a sin clinging to a sinner vanishes like that water.
>
> A man who knows dharma should prescribe the penances with discernment, after

examining a man's build, strength, and age, as well as the time and the deed.

Even if people who have not kept the vows or studied the Veda and who use their caste only to make a living come together in their thousands, they do not constitute a legal assembly. (1.1.7–16)

3

There are five areas in which there is disagreement with respect to the south, and likewise with respect to the north. We will explain the ones specific to the south. They are: eating in the company of an uninitiated person, eating in the company of one's wife, eating stale food, and marrying the daughter of the mother's brother or the father's sister.

The ones specific to the north, on the other hand, are: selling wool, drinking spiritous liquor, trafficking in animals with teeth in both jaws,[13] making a living as a soldier, and traveling by sea.

If a man follows the practices of the former in the latter, and those of the latter in the former, he becomes defiled. The authority of the region applies solely to each respective area.

"That is untrue," says Gautama. "A man should pay no heed to either set of practices, because they are shown to be opposed to the recollection of the cultured elite." (1.2.1–8)

4

The region to the east of Adarsa, west of the Kalaka forest, south of the Himalayas, and north of Pariyatra is the Arya land.[14] Any practice within it is authoritative.

Some say that it is the region between Ganga and Yamuna. In this connection, furthermore, the Bhallavins quote this verse:

> The boundary river in the west and where the sun rises in the east—between these, as far as the black antelope roams, so far does Vedic splendor extend.
>
> The inhabitants of Avanti, Anga, Magadha, Surastra, the southern region, Upavrit, and Sindh, and the Sauviras are of mixed pedigree.

If someone visits the lands of the Arattas, Karaskaras, Pundras, Sauviras, Vangas, Kalingas, or Pranunas, he should offer a Punahstoma or a Sarvapristha sacrifice.[15] Now, they also quote:

> When someone travels to the land of the Kalingas he commits a sin through his feet. The seers have prescribed the Vaisvanari sacrifice as an expiation for him.[16] (1.2.9–15)

2.3 VASISTHA (LATE FIRST CENTURY B.C.E.)

The *Aphoristic Text on Dharma* ascribed to Vasistha is the latest of the extant texts written principally in aphoristic prose. It is also the text that has been most tampered with and has a very weak manuscript tradition (Olivelle 2000). In general, Vasistha follows Baudhayana in dealing with the epistemology of dharma and provides few major advances or innovations, except perhaps for the eulogy of practice or good conduct (*cra*), taken not simply as authoritative practice but as good and exemplary conduct in the abstract, that is, moral virtue. The influence of Vedic exegesis on Vasistha is evident in the very opening sentence: "Next comes the desire to know dharma for the sake of

attaining the highest good of man." This is a paraphrase of the opening aphorism of the root text of the school of Vedic exegesis (*Mms Stra* 1.1.1).

We have seen that the dharmas of particular regions, castes, and families are presented as authoritative by both Apastamba (ch. 1.1: #8) and Gautama (ch. 2.1: #2). They discuss this, however, within diverse contexts: Apastamba in the context of inheritance and Gautama in the context of legal procedure. Both, moreover, surround such particular dharmas with restrictions; they must not be in conflict with Vedic injunctions.

Vasistha is the first author to address this issue explicitly within the context of the epistemology of law (selection #3), even though Baudhayana does talk of the distinctive practices of the north and south. When the Veda is silent on a particular issue, Vasistha says, then the dharmas of one's own region, caste, or family can fill the void. In this, these particular dharmas parallel the practices of the cultured elite, which are also authoritative in the absence of specific rules laid down in the Vedas and the texts of recollection. Vasistha's view has a nuance distinct from that of the previous authors. They demand that the regional dharmas must be shown to be not in conflict with Vedic statements, whereas Vasistha places emphasis only on the fact that the Vedas do not address a particular issue. Even though Vasistha would agree with his predecessors that in the event of a conflict the regional or family norms must be set aside, he elevates these norms to the level of a positive source of dharma.

The supremacy and exceptionalism of the Brahmans are reiterated in selection #4. Vasistha follows in the footsteps of Baudhayana (ch. 2.2: #2) in presenting the Brahmans as the ultimate arbiters of law, thus concentrating social and legal power in the hands of this community. The king is reduced to being the enforcer of laws determined by the Brahmans.

Vasistha does not discuss the legal assembly within the context of legal epistemology, but rather while discussing individuals who purify those with whom they sit while eating (selection #5). The significance of this institution appears to have waned by the time of Vasistha, and it retains its marginal position in the writings of later authors.

The term "practice" or "good conduct" (*cra*) gathered around it a broad spectrum of meanings, especially in relation to morality, virtue, and right living. Vasistha proclaims that "good conduct" is the highest dharma (selection #6), clearly using the latter meaning of the term; in this context I translate it as good conduct. One of the earliest expressions of this moral significance of the term within the science of dharma is this passage of Vasistha.

1

Dharma is laid down in Vedic texts and texts of recollection. In the absence of these, the practice of the cultured elite is authoritative. The cultured elite, however, are free from desire; and dharma is without a tangible motive. (1.4–7)

2

The dharmas and the practices of the region to the east of Adarsa, west of the Kalaka forest, north of Pariyatra, and south of the Himalayas—north of the Vindhya[17]—all those should be accepted; but not others, the depraved dharmas of the jungle.[18] This is called the Arya land. Some also say that it is the region between Ganga and Yamuna. Others say Vedic splendor extends as far as the black antelope roams. The Bhallavins, moreover, in their *Book of Causes* quote this verse:[19]

> The boundary river in the west and where the sun rises in the east—between these, as far as the black antelope roams, so far does Vedic splendor extend.
>
> What men who have mastered the three Vedas and know dharma declare to be dharma,

that is dharma for cleansing and for administering cleansing: in this there is no doubt. (1.8–16)

3

When there is no scriptural text, Manu has prescribed the dharma of the region, the dharma of the caste, and the dharma of the family. (1.17)

4

The three social classes shall abide by the instruction of the Brahman. The Brahman shall proclaim the dharmas, and the king shall govern accordingly. (1.39–41)

5

One proficient in the four Vedas; one exegete; one who knows the Vedic supplements;[20] one scholar of dharma; and three prominent men belonging to three orders of life[21]—these constitute a legal assembly with a minimum of ten members. (3.20)

6

Good conduct is the highest dharma for all—that is certain. A man bereft of good conduct and whose self is corrupt comes to ruin in this world and the next.

Whether it is austerities, the Veda, daily fire sacrifices, or sacrificial gifts— nothing will ever rescue a man bereft of good conduct and gone astray.

The Vedas, even if they have been recited along with the six supplements, do not purify a man bereft of good conduct. The Vedic texts forsake him at the time of death, like birdlings a nest when they have grown their wings.

What happiness, however, can the Vedas in their entirety, along with the supplements and sacrifices, bring to a Brahman who is bereft of good conduct, like a pretty wife to a husband who is blind?

Vedic texts cannot rescue from his wickedness a deceitful man living by deceit. When even a couple of syllables are recited properly, that Veda purifies the man, like clouds in the autumnal month.

For a man of evil conduct is the object of contempt in the world. Woes follow him at all times—he is afflicted with sicknesses and lives a short life.

Through good conduct flourishes dharma; through good conduct flourishes wealth; through good conduct one obtains prosperity. Good conduct obliterates inauspicious marks.

Even if he lacks any auspicious mark, a man of good conduct, full of generosity and free from envy, will live a hundred years. (6.1–8)

CHAPTER THREE

Perspectives from Political Science

Kautilya (First–Second Century C.E.*)*

Kautilya's *Treatise on Politics* is a manual on governance and law, a book on political science. In its formal structure, the treatise has three overlapping divisions: 15 books (*adhikaraa*), 150 chapters (*adhyya*), and 180 topics (*prakaraa*). The book division and the chapter division appear to be closely linked, the one presupposing the other. Each book is subdivided into chapters. The topic division stands apart from the other two. These multiple divisions correspond to the compositional history of the treatise. The first five books deal with the king and his education, and the internal governance of the state, with the third and fourth books devoted specifically to civil and criminal law. Books six through fourteen are devoted to what may be called foreign affairs. They deal with diplomacy and war, and include one of the earliest detailed descriptions of the elements of an ancient Indian army and the tactics of warfare. The final chapter is an appendix pointing out the features of a perfect scientific treatise, taking Kautilya's treatise as an exemplar.

Kautilya's treatise is a composite work, and its compositional history can be divided into three phases.[1] The first consists of the source material Kautilya used, dated to between 50 B.C.E. and 50 C.E. Kautilya's own composition, which was divided into topics, can be dated to the middle of the first century C.E. The third phase consists of what I have called the "stric Redaction," which added the chapter division. It was carried out sometime after the middle of the second century C.E.[2] When Kautilya's work is used for historical purposes, therefore, we need to pay special attention to these compositional layers separated by several centuries. I have given an analysis of Kautilya's work and its significance for the epistemology of dharma in the introduction.

1

In that bureau he should have the following entered in the registry books:

concerning departments—the totality of their number, procedures, and income;
concerning factories—the extent of the following: gain and loss of material in the manufacturing process, expenses, additional weight, surcharge, admixture, location, wages, and labor;[3]
concerning precious stones, articles of high value, articles of low value, and forest produce—price, sample, size, weight, height, depth, and container;[4]
concerning regions, villages, castes, families, and associations—dharmas, conventions, customs, and canons. (2.7.2)

From that bureau he should deliver in writing to all departments the records of their estimated revenue, established revenue, outstanding revenue, income and expenditure, balance, additional

revenue, procedures, customs, and canons. (2.7.3)

He should have their procedures, moreover, overseen by spies. For an official may cause a loss of revenue if he is unacquainted with the procedures, customs, and canons through ignorance. (2.7.9–10)

Canons, procedures, setting out the corpus of revenue, receipts, aggregate of all revenues, and grand total—these constitute the estimated revenue. (2.6.14)

If someone does not bring in the daily accounts,[5] he should wait for one month. After one month, he should pay a fine of 200 Paas, increased by 200 Paas for each additional month. If a small amount of the recorded balance remains outstanding, he should wait for five days. If he first deposits the amount in the treasury and then brings in the daily accounts after that period, he should investigate the matter by taking into account the dharmas, conventions, customs, and canons; by examining the sum total; by scrutinizing the work carried out; and by inference and the use of informants. (2.7.26–29)

The flourishing of procedures, fostering customs, suppressing thieves, controlling the officials, success of crops, abundance of commodities, providing relief during misfortune, reducing exemptions, and gifts of money—these are the ways to increase the treasury. (2.8.3)

Therefore, he should fix the duty on commodities, both new and old, according to the region, type of commodity, and custom, as also the penalties according to the offense. (2.22.15)

Alternatively, when taking a water route, he should acquire a thorough knowledge of the charges for the boats, the provisions for the journey, the value and quantity of his own commodities and the commodities received in exchange, the suitable times for the voyage, safeguards against dangers, and the customs at ports. On a river route also he should find out the conditions of trade from the customs at ports and go to the location from which a profit can be made, and avoid any loss. (2.16.24–25)

With regard to men and women of the families, furthermore, he should find out[6] how many are children and old people, what their occupations and customs are, and the amount of their earnings and expenditures. (2.35.5)

2

Whatever custom he may consider to be detrimental to the treasury and army or to be extremely adharmic, he should set it aside and establish a righteous convention. (13.5.14)

He should promote dharmic customs, both those that are not yet established and those that have been established by others. And he should not promote adharmic ones and put an end to those established by others. (13.5.24)

Or else, if he has set out to settle vacant land, he should give only money and not a village, so as to provide stability to conventions pertaining to the total revenue from the villages. (5.3.32)

Alternatively, they[7] should get them to nullify a settled convention by establishing the contrary. Or, when there are matters under legal dispute, assassins should provoke quarrels by attacking property, animals, and humans at night. (11.1.13)

One and a quarter Paas per month on 100 Paas is the dharmic rate of interest; five Paas, the conventional rate;[8] ten Paas for travelers through wild tracts; and twenty Paas for seafarers. For anyone charging or making someone charge more than that, the punishment is the lowest seizure fine,[9] and half that fine for each of the witnesses individually. When, however, the king is not providing security, he should take into account the customs among lenders and borrowers. (3.11.1–3)

3

Dharma, convention, custom, and royal decree: these are the four feet of the subject of a legal dispute; each succeeding one countermands each preceding one.

Among these, dharma rests on truth, convention on witnesses, and custom on the consensus of people, while royal decree is a king's command. (3.1.39–40)

CHAPTER FOUR

Innovations of Manu (Mid-Second Century C.E.)

The law code of Manu was composed by an author who gave it a unique structure.[1] Although Manu used diverse sources, especially Gautama and Kautilya, he created a text that bears his own stamp.

Manu introduced three major innovations in comparison to the previous literature of the dharma tradition, at least two of which had a direct impact on the epistemology of law. First, he composed his text entirely in simple thirty-two-syllable verses called *loka.* Second, he created a narrative structure that consists of a dialogue between a divine and transcendent being in the role of teacher and others desiring to learn from him. Third, he incorporated into his text a long exposition on the king, state administration, and especially judicial procedure derived at least partly from Kautilya's *Treatise on Politics*.

Late Vedic texts, especially the early prose *upaniad*s, regularly cite verses in support of statements and viewpoints. It appears that these verses were somehow viewed as having greater authority than prose and therefore as lending greater support to the author's views, much like citations from scripture. This practice was continued by the authors of the aphoristic texts on dharma, who also cite verses to support or confirm views they have already presented in prose and often introduce them with "Now, they also quote" (*athpy udharanti*), indicating that these verses were well-known sayings that experts would use in support of a particular practice or viewpoint.[2]

It appears, then, that during the last few centuries prior to the Common Era *loka* verses had assumed an aura of authority, and proverbial wisdom was transmitted as memorable verses. The logical outcome of this tendency was for important texts themselves to be composed in verse, lending authority to a text by its very literary genre. We see this already in some of the earliest Buddhist texts, such as the anthologies of the *Suttanipta* and the *Dhammapada* and in the verses of the Jataka tales. The same process was probably responsible for the fact that the early prose *upaniad* s, such as the *Bhadrayaka* and the *Chndogya*, are followed by a series of *upaniad*s composed entirely in verse, such as the *Kaha*, the *Muaka*, and the *vetvatara*. The parallel between the older and the later *upanisad*s is true of the dharma literature as well. Whereas the earlier texts are in prose with verse citations, the later ones are composed entirely in verse. The first such text was that of Manu. His use of verse for the composition of his treatise must have been part of a deliberate plan to lend the kind of authority to his text that would come only through this literary genre. Most later authors of treatises on dharma followed Manu's example.

The second innovation in his composition is its narrative structure. An anonymous group of seers approaches Manu and asks him to teach them dharma. Manu accedes to their wishes. He narrates the creation of the world up to the emergence of human society hierarchically arranged into the four social classes. Then he asks his pupil Bhrigu to teach them the rest (1.59). Bhrigu takes up the task in earnest; the rest of the book is his oral teaching. Although the text is mediated by a series of tellers and hearers, its ultimate authority lies in its original promulgator, the Creator himself. Paralleling the Buddhist doctrine of *buddhavacana*, the words of the Buddha, and doing one better

than that, Manu's text grounds its authority (*prama*) on the *svayambhvacana*, the words of the Self-Existent One, the very ground of creation. This appeal to a single source of authority stands in sharp contrast to the traditional source of authority for and means of knowing dharma, namely the Veda supplemented by texts of recollection (*smti*) and the practices (*cra*) of authoritative communities. Indeed, Manu presents the latter doctrine when he discusses the sources of dharma in chapter 2. There is thus a disjuncture between the narrative structure of chapter 1 and the body of the text. The author is a traditional pandit, and his habitual methods of reasoning, argumentation, and public presentation take over in the substantive parts of the text.

The third innovation of Manu is the incorporation of the duties of the king and judicial procedure (chapters 7–9). These subjects were treated perfunctorily by the earlier aphoristic texts on dharma, but Manu deals with them in detail. They were borrowed from the tradition of political science, and there is clear evidence that Manu had the original version of Kautilya's work before him when he composed these sections.[3]

Even though Brahmanical exceptionalism is present in the aphoristic texts on dharma we have examined, this ideology takes center stage in Manu, as seen in selection #1. His entire treatise is organized around the Brahman and his central and exceptional position within society. The Brahman is the subject of the first six chapters, whereas the next three chapters are devoted to the duties of the king. The other two social classes, Vaishya and Shudra, are discussed summarily in just ten verses at the very end of chapter 9.

In selection #2, Manu presents a more traditional discussion of the epistemology of law. We can detect three sections within this discussion, and the author appears to move from more general or traditional doctrines to his own specific view. The first paragraph gives five sources of dharma, the first three taken from Gautama and the fourth from sources that advocate the primacy of practice (*cra*), while the fifth appears to be something novel and perhaps the author's own contribution: what is pleasing to oneself (*tmatui*).[4]

The second paragraph is a eulogy of Manu and his legal treatise: everything laid down there is based on the Veda. This paragraph ends with the compound *rutismti* (Veda and recollection) that was articulated by Vasistha; these are the primary foundations of dharma. The third paragraph is a gloss on the second and explains the precise meanings of the two terms *ruti* and *smti.* For the first time *smti* is defined not just as text but as treatise on dharma. It also appears that here this treatise is identified with the specific one authored by Manu.

The third and final paragraph provides the final and concise view regarding the epistemic sources of dharma. They are now reduced to just four: Veda, texts of recollection, practice of good people, and what is pleasing to oneself. Here we find "conduct" (*la*) of Gautama silently eliminated and absorbed into "practice" (*cra*). Manu's innovation, what pleases oneself, was recorded by his successor, Yajnavalkya (ch. 4.1: #2), but gradually faded away in later epistemological discourse.

In selection #3, Manu deals briefly with the situation when two sources of law are in conflict, but his discussion, unlike that of Gautama (ch. 2.1: #1), is limited specifically to conflicts among Vedic injunctions rather than among diverse sources. The example is the Vedic texts that enjoin that the morning fire sacrifice be performed before sunrise, after sunrise, and at daybreak. All these are authoritative. In Vedic hermeneutics, such a conflict gives rise to an option; a person may follow any one of these injunctions.

Having defined the meanings of *ruti* and *smti,* Manu turns in selection #4 to the third significant category, *sadcra*, the practice of good people. In defining this category, he resorts to the sacred geography already described by his predecessors. He expands their taxonomy to a broader region extending at its largest to almost the entirety of northern India. However, it is the practices of good people living in two more restricted regions— the Brahma land and the region of Brahman seers—that become an authoritative source of dharma. The old Arya land becomes now a larger region stretching from the eastern to the western sea.

The centrality accorded to the Veda in the three texts presented in the previous chapter is taken to a new level by Manu (selection #5). The movement away from the multiplicity of the Veda with respect to individuals in different Vedic branches (*kh*) is continued. In this passage that comes at the conclusion of the treatise, Manu uses for the first time the expression *vedastra* (scientific treatise of Veda), presenting the Veda as a singular scholarly treatise on dharma. It is from this treatise that everything, including the physical universe, the human society, and the laws governing it, has come into being.

Here we also encounter a statement that comes close to recognizing competing scriptural traditions, which would become a concern for later authors such as Kumarila and Visvarupa (chs. 6.2 and 7.3). Manu talks about the scriptures that are outside the Veda (*vedabhy rutaya*), a veiled reference to the scriptural traditions of the new religions, especially Buddhism. In some of his manuscripts and commentaries the term *smtaya* is used in place of *rutaya*, pointing to texts of recollection that fall outside the Vedic tradition.

At the conclusion of his work (selection #6), Manu turns to the question of those areas of dharma that may not be addressed in the normal sources such as the Veda and texts of recollection, much like Apastamba at the end of his work (ch. 1.1: #3). But unlike Apastamba, Manu points to a much more restricted set of resources for resolving such problems, all centered on the Brahman. The first such resource is the "cultured elite" (*ia*), but for Manu he is simply a very learned Brahman without any reference to his place of residence; Arya land is removed from the definition. The second resource is the legal assembly (*pariad*), and the third is simply a learned Brahman.

Like Vasistha (ch. 2.3: #6), Manu in selection #7 extolls *cra,* again interpreted not simply as the normative practices of a community but with a deeply moral connotation as good conduct of virtuous people. Here Manu returns to the two other sources of dharma, scripture and texts of recollection (*rutismti*), but gives pride of place to good conduct. In the second of the two passages, he appears to claim that the root of dharma is actually good conduct, and it is this good conduct that is set forth in the Veda and the texts of recollection.

In selection #8, we have for the first time a clear articulation of the theory of world ages (*yuga*), whose use as an interpretive tool to make some rules and practices found in ancient text obsolete and nullified for contemporary society I have discussed in the introduction.

1

Manu was seated, absorbed in contemplation, when the great seers came up to him, paid homage to him in the appropriate manner, and addressed him in these words: "Please, Lord, tell us precisely and in the proper order the dharmas of all the social classes, as well as of those born in between;[5] for you alone, Master, know the true meaning of the duties contained in this entire ordinance of the Self-Existent One, an ordinance beyond the powers of thought or cognition."

So questioned in the proper manner by those noble ones, that Being of boundless might paid honor to all those great seers and replied: "Listen!" (1.1–4)

"After composing this treatise, he himself[6] in the beginning imparted it according to rule to me alone; and I, in turn, to Marici and the other sages.[7] Bhrigu here will relate that treatise to you completely, for this sage has learned the whole treatise in its entirety from me."

When Manu had spoken to him in this manner, the great sage Bhrigu was delighted. He then said to all those seers: "Listen!" (1.58–60)

To determine which activities are proper to him[8] and which to the remaining classes in their proper order, Manu, the wise son of the Self-Existent, composed this treatise. This should be studied diligently and taught to his pupils properly by a learned Brahman, and by no one else.

When a Brahman who keeps to his vows studies this treatise, he is never sullied by faults arising from mental, oral, or physical activities; he purifies those alongside whom he eats,[9] as also seven generations of his lineage before him and seven after him; he alone, moreover, has a right to this entire earth.

This treatise is the best good-luck incantation; it expands the intellect; it procures everlasting fame; and it is the ultimate bliss. In this, dharma has been set forth in full—the good and the bad qualities of actions and the timeless normative practices— for all four social classes. (1.102–107)

2

The entire Veda is the root of dharma, as also the recollection and conduct of those who know it; likewise the practice of good people, and satisfaction of oneself.

Whatever dharma Manu has proclaimed with respect to anyone, all that has been taught in the Veda, for it contains all knowledge. After subjecting all this to close scrutiny with the eye of knowledge, a learned man should apply himself to the dharma proper to him on the authority of scripture, for by following the dharma proclaimed in scripture and texts of recollection, a man achieves fame in this world and unsurpassed happiness after death.

"Scripture" should be recognized as "Veda" and "text of recollection" as "treatise on dharma." These two should never be called into question in any matter, for it is from them that dharma has shined forth. If a twice-born man disparages these two by relying on the science of logic, he ought to be ostracized by good people as an infidel and a denigrator of the Veda.

Veda, texts of recollection, the practice of good people, and what is pleasing to oneself—these, they say, are the four visible marks of dharma. The knowledge of dharma is prescribed for people who are unattached to wealth or pleasures; and for people who seek to know dharma, scripture is the highest authority. (2.6–13)

3

When there are two contradictory Vedic texts on some issue, however, texts of recollection state that both are dharma with respect to it, for wise men have correctly pronounced them both to be dharma. After sunrise, before sunrise, and at daybreak— the sacrifice takes place at any of these times; so states a Vedic scripture.[10] (2.14–15)

4

The region created by the gods and lying between the divine rivers Sarasvati and Drisadvati is called "Brahmavarta"—the Brahma land. The practice in that region handed down from generation to generation among the social classes and the intermediate classes is called the "practice of good people."

Kuruksetra and the countries of the Matsyas, Pancalas, and Surasenakas constitute "Brahmarsidesa"—the region of Brahman seers, which borders on the Brahma land. All the people on earth should learn their respective customs from a Brahman born in that region.

The region between the Himalaya and Vindhya ranges, to the east of Vinasana and west of Prayaga, is known as "Madhyadesa"—the middle region.

The region between the same mountain ranges extending from the eastern to the western sea is what the wise call "Aryavarta"—the Arya land.

The natural range of the black antelope is to be recognized as the region fit for sacrifice; beyond that is the land of barbarians.

Twice-born people should diligently settle in these lands; but a Shudra, when he is starved for a

livelihood, may live in any region at all. (2.17–24)

5

The Veda is the eternal eyesight for ancestors, gods, and humans, for the Vedic treatise is beyond the powers of logic or cognition—that is the settled rule. Those scriptures that are outside the Veda, as well as every kind of fallacious doctrine—all those bear no fruit after death, for texts of recollection take them to be founded on darkness. All those different from the Veda that spring up and then flounder—they are false and bear no fruit, because they belong to recent times.

The four social classes, the three worlds, and the four orders of life, the past, the present and the future—all these are individually established by the Veda. Sound, touch, visible appearance, taste, and the fifth, smell, are established by the Veda alone; their origin is according to attribute and action. The eternal Vedic treatise bears all beings; it is the means of success for these creatures; therefore, I consider it supreme.

A man who knows the Vedic treatise is entitled to become the chief of the army, the king, the arbiter of punishment, and the ruler of the whole world. As a fire, when it has picked up strength, burns up even green trees, so a man who knows the Veda burns up his taints resulting from action. A man who knows the true meaning of the Vedic treatise, in whatever order of life he may live, becomes fit for becoming *brahma* while he is still in this world.

Those who rely on books are better than the ignorant; those who carry them in their memory are better than those who only rely on books; those who understand are better than those who only carry them in their memory; and those who resolutely follow them are better than those who only understand. For a Brahman, ascetic toil and knowledge are the highest means of securing the supreme good; by ascetic toil he destroys impurity and by knowledge he attains immortality.

Perception, inference, and treatise derived from diverse sources—a man who seeks accuracy with respect to dharma must have a complete understanding of these three. The man who scrutinizes the record of the seers and the teachings of dharma by means of logical reasoning not inconsistent with the Vedic treatise—he alone knows dharma, and no one else. (12.94–106)

6

If it be asked: what happens in cases where specific dharmas have not been scripturally laid down? What Brahmans who are cultured elite state is the undisputed dharma. Those Brahmans who have studied the Veda together with its amplifications[11] in accordance with dharma and are able to adduce as proofs express Vedic texts[12] should be recognized as the cultured elite.

Alternatively, when a legal assembly with a minimum of ten members, or one with a minimum of three members firm in their conduct, determines something as dharma, no one must question that dharma. Three persons who know the three Vedas, a logician, a hermeneut, an etymologist, a scholar of treatises on dharma, and three individuals belonging to the first three orders of life[13] —these constitute a legal assembly with a minimum of ten members. A man who knows the *Rig Veda*, a man who knows the *Yajur Veda*, and a man who knows the *Sma Veda*—these should be recognized as constituting a legal assembly with a minimum of three members for settling doubts regarding dharma. When even a single Brahman who knows the Veda determines something as dharma, it should be recognized as the highest dharma, and not something uttered by myriads of ignorant men. Even if people who have not kept the vows or studied the Veda and who use their caste only to make a living come together in their thousands, they do not constitute a legal assembly. When fools, befuddled by darkness, make a pronouncement without knowing dharma, that sin, compounded a hundredfold, stalks those who proclaim it.[14] (12.108–115)

7

Good conduct is the highest dharma, both what is declared in scriptures and what is given in texts of recollection. Applying himself always to this treatise, therefore, let a twice-born man remain constantly self-possessed. When a Brahman has fallen away from good conduct, he does not reap the fruit of the Veda; but when he holds fast to good conduct, texts of recollection say, he enjoys its full reward. Seeing thus that dharma proceeds from good conduct, the sages understood good conduct to be the ultimate root of all ascetic toil. (1.108–110)

He should tirelessly follow the root of dharma, namely, the conduct of good people, which is well set forth in scriptures and texts of recollection and is closely tied to the activities proper to him. For by good conduct he obtains long life; by good conduct he obtains the kind of offspring he desires; by good conduct he obtains inexhaustible wealth; and good conduct obliterates inauspicious marks. For a man of evil conduct is the object of contempt in the world. Woes follow him at all times—afflicted with sicknesses and living a short life. Even if he lacks any auspicious mark, a man of good conduct, full of generosity and free from envy, will live a hundred years. (4.155–158)

8

In the Krita Age, dharma is whole, possessing all four feet; and so is truth. People never acquire any property through adharmic means. By acquiring such property, however, dharma is stripped of one foot in each of the subsequent ages; through theft, falsehood, and fraud, dharma disappears a foot at a time. (1.81–82)

There is one set of dharmas for men in the Krita Age, another in the Treta, still another in the Dvapara, and a different set in the Kali, in keeping with the progressive shortening[15] taking place in each age. Ascetic toil, they say, is supreme in the Krita Age; knowledge in the Treta; sacrifice in the Dvapara; and gift-giving alone in the Kali. (1.85–86)

CHAPTER FIVE

Developments After Manu

The legal tradition following Manu between the second and eighth centuries C.E., represented by the texts of Yajnavalkya, Narada, Visnu, Brihaspati, Katyayana, and others, demonstrates a rapid growth in scholarly reflections on jurisprudence in general and legal procedure in particular, with an ever more sophisticated and technical vocabulary. Yet this growth occurred almost exclusively in the area of court procedures and dispute resolution, as we will see in the second part of this source-book. Quite surprisingly, this progress did not touch the more theoretical aspects of jurisprudence relating to the definition and epistemology of law.

This disparity in the development of jurisprudence is evidenced by the growing specialization of treatises on dharma. Even though much of the textual production of these six centuries is now lost, it appears that many of the major legal treatises, such as those of Narada, Brihaspati, and Katyayana, ignored most areas of dharma and focused narrowly and exclusively on legal procedure, called *vyavahra.* The reason for this concentration may have been that the jurists who produced these texts were more interested in the practical application of law during a time when increasingly Brahman jurists acted as judges in post-Gupta kingdoms.[1] Interest in the epistemological issues would be reignited by a sister intellectual tradition, that of Vedic exegesis, and by commentators on early treatises on dharma, such as Bharuci, Visvarupa, and Medhatithi, writing between 700 and 900 C.E.

Only two post-Manu treatises on dharma deal with epistemological issues relating to dharma, those of Yajnavalkya and Visnu. The text of Parasara is unique in that it attempts to focus its epistemology on the current age we live in, the Kali Age, and to point out that Parasara is teaching the dharma specific to this age. Most other texts, including the treatise of the Vaikhanasas (*Vaikhnasa Dharmastra*), show no interest in this issue.

5.1 YAJNAVALKYA (FOURTH–FIFTH CENTURY C.E.)

The treatise of Yajnavalkya is in many ways unique. First, although it is written in verse, the verses are so terse, with several ideas woven into each, that they resemble more the aphoristic prose of the *stra* genre. Thus, Yajnavalkya is able to condense his material into a little over 1,000 verses, almost two thirds less than Manu's 2,781 verses. Second, much of the work appears to be a paraphrase or condensation of two previous texts, the treatises of Kautilya and Manu. Yet, especially in the area of legal procedure, Yajnavalkya represents clear advances in substance and technical vocabulary. Third, Yajnavalkya composed his text between the fourth and fifth centuries C.E. during the time of the Gupta Empire, which in many ways returned the Brahman to his preeminent position in society and reinstated the notion of Brahmanical exceptionalism.

Yajnavalkya follows Manu's lead in embedding his treatise within a narrative framework. Here sages visit the seer and yogin Yajnavalkya and ask him to teach them dharma in its entirety (#1). The

text, then, is presented as the teaching of Yajnavalkya. Unlike Manu, however, he speaks frequently in the first person throughout and returns to the frame story at the end of the treatise (*YDh* 3.328f). where the sages thank him and praise the text he has composed.

The treatise contains three broad divisions devoted to normative practice (*cra*), legal procedure (*vyavahra*), and expiation (*pryacitta*). This division would become standard in medieval legal literature. The significant point is that these three areas are presented by Yajnavalkya as three subdomains of dharma. Thus, normative practice is now not simply a concept related to the epistemic sources of dharma but actually a specific area of activity within the broader category of dharma.

Regarding the epistemology of dharma as such, Yajnavalkya does not represent a great advance over Manu. He follows Manu in giving the five epistemic sources (#2), but in several places he gives significant weight to knowledge of the self (*tman*) and to yogic insight. Thus, in the context of the legal assembly, he says that even a single person with knowledge of the highest self has the competence to declare dharma. He also stresses the importance of giving and generosity (*dna*), which, at 1.6, he calls the very gist of dharma.

It is clear that by the time of Yajnavalkya, the term "recollection" (*smti*) had come to refer to written treatises on dharma. He is the first to provide a list of twenty such documents, although it is not quite clear whether these two verses are original.[2] It is also clear that by the time of Yajnavalkya there were two recognized genres of authoritative textual (whether written or not) sources of dharma, *ruti* and *smti*, and in the latter category scholars could come up with canonical lists. The problem that later authors, especially the Vedic exegetes such as Kumarila, faced was whether all texts falling into this category, even such extraneous works as Buddhist scriptures, could be authoritative and, if not, how such discriminations could be made.

The text of Yajnavalkya used here is from my forthcoming critical edition to be published in the Murty Classical Library of India by Harvard University Press. That edition broadly follows the text established by the ninth-century commentator Visvarupa (see ch. 7.2) and follows his numbering of the verses.

1

The king of yogins, Yajnavalkya—the sages, after paying him homage, said to him: "Tell us in their entirety the dharmas pertaining to the social classes, to the orders of life, and to others."[3] Residing in Mithil, that foremost of yogins, after pondering it thoroughly, said to the sages: "Listen to the dharmas in the region of the black buck."[4]

The Vedas coupled with Puranas, logic, hermeneutics, treatises on dharma, and supplements—these are the fourteen sites of the sciences, and of the dharma.[5] The promulgators of legal treatises are: Manu, Visnu, Yama, Angiras, Vasistha, Daksa, Samvarta, Satatapa, Parasara, Apastamba, Usanas, Vyasa, Katyayana, Brihaspati, Gautama, Sankha, Likhita, Harita, Atri, as well as myself.

When an article is given by individuals imbued with the spirit of generosity, at a proper place and time, to a worthy recipient, and following the proper procedure— that is the entire definition of the dharma. (1.1–6)

2

Veda, text of recollection, conduct of good people, what is pleasing to oneself, and desire resulting from right intention—that, according to texts of recollection, is the root of dharma.

Sacrifices, normative practices, self-control, refraining from injury, gift giving, and Vedic recitation—among these activities, however, this is the highest dharma: to perceive the Self by

means of Yoga.

Four persons who grasp the Vedas and dharma constitute a legal assembly; alternatively, just an expert in the triple Veda. What that assembly declares—or even a single individual who knows the inner Self completely—is dharma. (1.7–9)

5.2 VISHNU (SEVENTH CENTURY C.E.)

The text ascribed to the god Vishnu is anomalous in several aspects. First, this is the only composition within the science of dharma that contains the teaching of a god who is prominent within the devotional (*bhakti*) tradition. It was composed within the Vaishnava sect of Pancaratra around the seventh century C.E. and can be definitely located in Kashmir.[6]

Its frame story is the rescue of the goddess Earth after she has been taken by demons to the depth of the ocean. The rescue was done by Vishnu incarnate as a boar, *varha*. This incarnation of Vishnu was prominent within the Gupta religious ideology.[7] The Earth (*pthiv*) goes to Visnu to be instructed in dharma, and the text is presented as his teaching.

What is significant is that the author of this text makes no effort to include the epistemology of dharma that was so prominent in earlier texts of the science of dharma. No mention is made of either the Veda or the texts of recollection as the sources of dharma. The author, being a devotee of Vishnu, evidently thought it superfluous to mention such sources when Vishnu himself had set forth all the dharmas that people should live by. This stands in contrast to the texts of Manu and Yajnavalkya, which also have frame stories that ascribe the teachings to those authoritative persons, yet present in addition the traditional epistemology of dharma.

When the night of Brahma was over and the Lotus-Born One had awakened, Vishnu, desiring to create the beings, realized that Earth was submerged in water. So, as at the beginning of each former eon, taking on the splendid form of a boar that loved to play in the water, he lifted up the Earth. (1.1–2)

After creating the universe with its mobile and immobile beings in this manner, Lord Boar then retreated to a state that was invisible to the worlds. When Janardana, the god of gods, had retreated to that invisible state, Earth thought to herself: "What will be my support in the future? I will go to Kasyapa and ask him. He will explain it to me, without doubt. That great sage has me constantly in his thoughts." (1.18–20)

Kasyapa saw her come near, paid her homage, and said to her: "Go to Janardana, O goddess. He will tell you fully how your stability will be sustained in the future." (1.30–31)

Seeing that Lotus-Eyed One, she paid homage to Madhusudana and, kneeling down, she beseeched him: "You raised me up, O god, when I was sunk to the bottom of Rasa tala,[8] and you settled me in my own location, O Vishnu, seeking the welfare of the worlds. What will be my support there in the future, O lord of gods?"

So addressed by that goddess, the god spoke to her these words: "Good people who take delight in the conduct of the social classes and orders of life and who are totally devoted to the authoritative treatise, O Earth, will support you. The task of caring for you is entrusted to them." When she was told this, Earth said to the god of gods: "I wish to hear them from you, O joy of Vasava, the dharmas of the social classes and orders of life, for you are my supreme refuge." (1.44–49)

"Tell me, Lord, the eternal dharmas of the four social classes, along with the conduct of the four orders of life, the secret rules, and the synopses."

So requested by Earth, the lord of gods said: "Listen, O Goddess Earth, to the eternal dharmas of the four social classes, along with the conduct of the four orders of life, the secret rules, and the synopses, dharmas that will be the refuge of those good people who will support you. Sit down, O you with lovely thighs, on this splendid golden seat. Seated comfortably, listen as I explain the dharmas." Earth, then, seated comfortably, listened to the dharmas given by Vishnu. (1.61–65)

5.3 PARASARA (SEVENTH–EIGHTH CENTURY C.E.)

The specialization within the legal tradition noted earlier with respect to the texts of Narada, Brihaspati, and the like is evident also in the treatise ascribed to Parasara. Unlike the others, who focused on legal procedure (*vyavahra*), however, Parasara deals with the other two areas of dharma in the classification of Yajnavalkya, proper practice (*cra*) and expiation (*pryacitta*). Parasara's text is small, consisting of just 592 verses, and its survival is no doubt due to the large commentary on it written by the fourteenth-century scholar Madhava (*PrM*).

Parasara mentions both Manu and Yajnavalkya and presents his *Treatise on Dharma* as the most appropriate for the present Kali Age. This is the first text where the division of dharma according to the four world ages (*yugadharma*) takes center stage. It spells out the theory that dharma is essentially different in different world ages, the dharma presented by Parasara being the best suited for the current age.

Parasara of great energy, the son of Sakti, was seated at ease in the middle of that assembly hall of seers surrounded by large numbers of the foremost sages, and Vyasa with folded hands, along with the seers, paid him homage with songs of praise and salutation, and by circumambulating him.

Then the great sage Parasara, that bull among sages, seated with a joyful heart, said to them: "Welcome! Do speak." After saying, "We are well," Vyasa immediately asked him:

"If you know my devotion, or because of your affection, O you who are kind to your devotees, explain to me, father, the dharma, for I deserve your favor. I have learned the dharmas of Manu, Vasistha, Kasyapa, Gargi, and Gautama; those given in Usanas's text of recollection; those of Atri, Visnu, Samvarta, Daksa, Angiras, Satatapa, Harita, and Yajnavalkya; the dharmas composed by Apastamba, Sankha, Likhita, Katyayana, and the sage Pracetas. I have learned those that you have taught, and I have not forgotten the meaning of what I learned, the dharmas prevalent in this epoch of Manu within the ages of Krita, Treta, and so forth.

"All the dharmas are born in the Krita Age, and all the dharmas are destroyed in the Kali Age. Tell us the proper conduct of the four social classes and any conduct that is generally applicable. Teach us, O you who know the essence of dharma, the duties of all four social classes that should be followed by those who know dharma well, both the subtle and the tangible, in detail."

After Vyasa had spoken, however, the foremost sage Parasara proclaimed the final determination of dharma, both the subtle and the tangible, in detail.

"Listen, son, I will proclaim it. And let the sages also listen.

"In each and every eon, as the universe is destroyed and is born, Brahma, Vishnu, and Mahesvara are always the authors of Vedic texts, texts of recollection, and practices of the good. No one is the composer of the Veda. After Brahma has recalled the Veda, so also does Manu recall the dharmas within each eon.

"There is one set of dharmas for men in the Krita Age, another in the Treta, still another in the Dvapara, and a different set in the Kali, in keeping with the form they have in each age. Ascetic toil, they say, is supreme in the Krita Age; knowledge in Treta; sacrifice alone in Dvapara; and gift

giving alone in Kali.

"In the Krita Age, however, the dharmas are said to be those of Manu; in Treta, those of Gautama; in Dvapara, those of Sankha-Likhita; and in Kali, those of Parasara. In the Krita Age a man should abandon the region; in Treta, the village; in Dvapara, just the family; and in the Kali Age the doer.[9] In Krita one falls from caste by simply speaking; in Treta, by touching; in Dvapara, by accepting food; and in Kali, by action.

"In Krita a curse takes effect immediately; in Treta, after ten days; in Dvapara, after a month; and in Kali, after one year.

"In Krita a gift is given after approaching the person; in Treta it is given after inviting the person; in Dvapara it is given to a person who is begging; and in Kali it is given after the person has rendered a service. The gift is best when given after approaching; it is middling when given after an invitation; the lowest is when it is given to a person who begs; giving for service, however, produces no reward.

"In the Kali Age dharma is defeated by adharma, and truth by untruth; kings are defeated by thieves, and men by women. Always in this Kali Age, fire sacrifices are extinguished, worship of elders is destroyed, and girls are born.

"In the Krita Age life-breaths are located in the bones; in Treta they rest in the flesh; in Dvapara, in the blood; and in Kali they are stationed in food and the like.

"The dharmas of respective ages, as well as twice-born people living in them— one should not disparage them, for twice-born people take on the form of each age." (1.1.8–33)

CHAPTER SIX

The School of Vedic Exegesis

The literature reviewed thus far consists of the primary texts of recollection often referred to as *mlasmti,* the foundational treatises. Their discussions of the epistemological issues relating to law and dharma are concise and declarative. There is little or no discussion about problems inherent in the epistemology they espouse, no window into the deliberations and debates that must have taken place among scholars of the time. We see just the tip of the iceberg; what lies below the surface has to be mined through careful analysis of the texts, often by reading between the lines. Consequently, my own introductions to and commentaries on these texts tended to be overly long. I have tried to reveal what may lie hidden behind the straightforward statements of these authors.

The second half of the first millennium C.E., in contrast, was the age of commentators. They engaged directly, forcefully, and in great detail with the theoretical issues connected to the epistemology of dharma. This was the golden age of Indian scholasticism when authors in numerous systems of knowledge, including philosophy, logic, and exegesis, engaged in written debate with their opponents.[1] These discussions generally had the format of presenting the views and objections of opponents, technically called *prvapaka*, and then responding to those objections, thereby establishing the doctrine supported by the author. In presenting these texts, I have distinguished typographically the views of the opponents, given in italics, and the doctrinal positions of the authors, given in roman type. These theoretical writings bring to the surface the debates and disagreements underlying the texts of the earlier period.

The earliest of these commentarial writings come from the school of Vedic exegesis. The concept of dharma was at the heart of such exegesis, because Vedic in junctions that laid the foundation of the ritual system were considered to be also the foundation of dharma. For Vedic exegesis, dharma is basically ritual activity. The foundational text of this school, the *Prva-Mms Stra* (*PMS* 1.1.2), gives the definition of dharma at the very outset (see ch. 6.1: #1).

In this chapter are samples from two early writers of the school, Sabara and Kumarila. Their writings are extensive and, given the limits of this volume, I can only present brief extracts that are hopefully representative of their views on the epistemology of dharma. Several issues occupy the foreground in their discussions.

First, is dharma based solely on Vedic injunctions? And do all Vedic injunctions constitute dharma? This is the first topic taken up by Sabara. Second, is all of dharma found explicitly in the Veda? If not, what are the additional sources of dharma? This brings up the issue of texts of recollection and their relationship to the Veda. Even though Manu explicitly equates the category of texts of recollection with treatises on dharma, the former often included other authoritative texts. If all these texts are based on the Veda, then how can we exclude from this authoritative corpus texts such as those of the Buddhists that also can claim to be texts of recollection?

Vedic exegesis provided theoretical infrastructure to scholars working within the legal tradition of the science of dharma. We will see in the next chapter how these jurists integrate exegetical

categories and theories while at the same time departing from them, because for the jurists dharma was not simply ritual but pervaded all areas of human and social life, especially law, statecraft, and legal procedure.

6.1 SABARA (FIFTH CENTURY C.E.)

We have no credible information about Sabara's life, even about when and where he lived and worked. The text on which he wrote his great commentary, the *Prva-Mms Stra*, is likewise of uncertain date. Some have dated it to between the fourth and second century B.C.E., while others place it in the second century C.E. There appears to be a scholarly consensus that Sabara himself should be dated to the fifth century C.E., even though this is simply a reasonable conjecture.[2]

I give here three extracts from Sabara's commentary. The first deals with the definition of dharma and its foundation in the Veda. A noteworthy point is that, for Sabara, not all Vedic prescriptions constitute dharma, because some of them are detrimental (*anartha*). The second is a long argument on the authority of texts of recollection. It starts with an extended objection that includes the aphorism 1.3.1 of the *PMS*. The opponent argues a conservative position, namely, that only the Veda can provide a secure foundation for dharma and anything other than the Veda must be rejected. Sabara's response takes up the remainder of this extract. He finds many injunctions in texts of recollection, such as constructing water reservoirs and going behind a teacher, to have visible purposes (*drtha*) and to be authoritative simply on that basis. But precisely because of this, they do not constitute dharma, which, by definition, must have an invisible purpose (*adrtha*). The final extract deals with the authority of customary practice with respect to dharma. It rejects the notion, already present in Baudhayana (see ch. 2.2: #3) that some practices are authoritative only in particular regions (*deadharma*). For Sabara, dharma and injunctions that form its basis should be universally valid.

Sabara is comfortable with the fact that some texts of recollection, when they are in conflict with available Vedic texts, may be erroneous and, therefore, without authority. This view will be contested by Kumarila, who wants to preserve the authority of all texts of recollection.

1

Dharma is something beneficial disclosed by a Vedic injunction. (*PMS* 1.1.2)

The beneficial and the detrimental[3]—both are here disclosed by injunctions. What is that which is beneficial? It is what leads to ultimate felicity, such as the standard Soma sacrifice. What is that which is detrimental? It is what leads to perdition, such as the Hawk, Thunderbolt, and Arrow sacrifices.[4] In order to preclude the possibility that what is detrimental be taken as dharma, the author uses there the expression "something beneficial."

How is that detrimental?

Because it involves killing, and killing is prohibited.

How is it that something detrimental is taught as something that must be performed?

We respond: the Hawk sacrifice and the like are never prescribed as things that must be performed. For they are taught in the following manner: "This is the means for someone who desires to kill." For the scripture lays down: "A man intent on doing sorcery should offer the Hawk sacrifice," and not: "He should perform sorcery."

But surely, this aphorism is unable to express both these points: (a) dharma is disclosed by Vedic injunctions and not by sense organs and the like; and (b) dharma is what is beneficial and not what is detrimental. For this is a single sentence, and, if we follow this, it will be split.[5]

We respond: that would be true in the case of a statement from which an act is learned. That, however, happens in the case of Vedic statements and not aphorisms. Once an act has already been learned from elsewhere, one learns that this aphorism presents that specific act. And therefore, an aphorism gets its name from the fact that it strings[6] together individual parts of sentences. In this aphorism, it should be understood that these two individual parts pertain to two distinct sentences.

2

Now in what preceded, we have demonstrated that the entire Veda is authoritative. So, now the question arises: When we do not find a Vedic text with regard to something, while texts of recollection state that this act should be performed in this manner and for this purpose, is that so, or not? Here are some examples: "One should perform the Eighth-Day rite";[7] *"One should walk behind one's teacher";*[8] *"One should dig reservoirs";*[9] *"One should establish watering places";*[10] *"One should perform the rite of fashioning a topknot on the head";*[11] *and so on.*

Therefore, it is said:[12]

Because Vedic texts are the foundation of dharma, anything lying outside the Vedic texts should be disregarded. (*PMS* 1.3.1)

It was already stated that dharma is disclosed by Vedic texts in the statement: "Dharma is something beneficial disclosed by a Vedic injunction" (*PMS* 1.1.2). *Such an act,*[13] *therefore, should be disregarded, because it lacks that foundation.*

Surely, when they knew that this enjoined act should be performed in this manner, how could they in fact say that it should not be performed at all?

Because in such a case recollection is impossible, for one does not recall something one has neither experienced nor heard of. And it is not possible to recall this thing that is found neither in the Vedas nor in the world,[14] *because a cause that would generate a prior cognition is absent. For if a barren woman were to recall: "This was done by my daughter's son," realizing, "I do not have a daughter," she would recognize that it was in no way a correct cognition.*

Nevertheless, just as the recollection of these individuals is authoritative when they say, "This is the Veda," because that recollection has come down in an unbroken line through the generations, so also this recollection of theirs must be authoritative.

That is not so. Because the text of the Veda is cognized by perception, it is not impossible to have a prior cognition of it. In the case of the Eighth-Day rite and the like that do not have a visible purpose, however, we must assume that it is simply an erroneous recollection, because in their case a cause that would generate a prior cognition is absent. It is like this. Some individual who was born blind may say: "I recall this specific form." When he is questioned: "Where did you get this prior cognition?" he would point to another man who was also born blind. And where did he get it? From someone else born blind. Thus, even if there is a continuous line of people born blind, learned men will never conclude: "This is a correct observation." Therefore, these kinds of things should not be treated seriously; they should be disregarded.

Or rather, recollection is authoritative insofar as there is an inference because of the identity of the performers. (*PMS* 1.3.2)

The expression "or rather" overturns the above viewpoint. Recollection is authoritative, for it is a cognition. How can a cognition become erroneous? Should you argue—

There is no prior cognition of it, because of the absence of a cause.

We must infer a cause for the stability of this very recollection. But it is not experience, because that is impossible, for human beings are unable to experience this kind of act in this very birth, and they do not remember what they experienced in previous births. A text, however, could be inferred, "because of the identity of the performers" of the acts enjoined in the Vedas and in texts of recollection. Therefore, the connection to the Veda made by people of the three social classes is quite appropriate.[15]

Surely, people don't perceive this kind of text.[16]

Even though they do not perceive it, they can infer it, given that forgetting is also a distinct possibility.[17] Therefore, because of the possibility of prior knowledge on the part of the people of the three social classes who have this recollection, and because of the possibility of forgetting, it is indeed possible to infer the text. Hence, texts of recollection are authoritative.

Further, in the Veda one sees mantras with indicators that point to the Eighth-Day sacrifice, such as: "The night whom people welcome joyfully like an approaching cow, the night who is the wife of the year—may she be propitious to us. *Svh*."[18] Likewise, practices that are adhered to as the occasion demands are authoritative simply because they have visible purposes. Someone thinks that, because he goes behind the teacher, the teacher, being pleased, will teach him, and, being extremely pleased, will explain the rules of interpretation that would cut through the knotty problems found in texts. Likewise, a text points out: "Therefore, the lesser follows from behind the superior as he goes in front" (*TS* 5.1.2.3). Watering places and reservoirs also, it is clearly understood, are for the benefit of others, not for the sake of dharma. And accordingly, there is the textual reference: "You are like the first drink in a wasteland, O fire, for Pru who seeks to attain you, you age-old king."[19] And likewise: "They surround the water with a dike" (*TS* 1.6.10.5).[20] The fashioning of a topknot identifies one's Vedic branch. And the textual reference is: "Where arrows fall together like boys with unraveled topknots" (*V* 6.75.17). Therefore, those with visible purposes are authoritative precisely because of that. With regard to those with invisible purposes, however, one must infer a Vedic text.

> When a text of recollection conflicts with a Vedic statement, however, the former should be disregarded, for only when they do not conflict is there an inference. (*PMS* 1.3.3)

In a situation, however, where a text of recollection conflicts with a Vedic statement, how should one proceed? Here are some examples. The complete wrapping of the Udumbara post conflicts with the Vedic statement: "He should sing the Sman chant after touching the Udumbara post."[21] Living as a Vedic student for forty-eight years conflicts with the Vedic statement: "A man who has fathered a son should establish his sacred fires while his hair is still black" (see *BDh* 1.2.3.5). A man who has purchased Soma being a person whose food may be eaten (see *Bhrr* 10.9.4) conflicts with the Vedic statement: "Therefore, after the animal dedicated to fire and Soma has been sacrificed, one may eat at the house of the patron of the sacrifice" (*MS* 3.7.8).

Given that the authors of these texts are the same, these are authoritative.

With regard to this conclusion, we say: because it is impossible to carry out these acts, one must conclude that it is an erroneous recollection.

Why is it impossible?

Because touching the post is enjoined, it is not possible both to wrap it completely and for the singer of the Sman to touch it. Once we recognize that the post should be touched while he is singing the Sman, what would make us nullify this conviction?

The recollection relating to the complete wrapping, we say.

Surely, that recollection is erroneous because it lacks a foundation.

A Vedic statement must be its foundation.

Yes, a Vedic statement could be the foundation if the injunction to touch is erroneous. If it is not erroneous, however, such a recollection would be inadmissible, because then it would be impossible to touch the post. Just as one cannot assume that a direct perception is inadmissible, so also one cannot assume that a Vedic text is inadmissible.[22]

Then, what do you make of the recollection regarding wrapping the post completely?

It is erroneous.

For what reason do you assume that it is erroneous?

Because it conflicts with a cognition derived from the Veda.

Then, why isn't there an option between these two injunctions, in the same way as between "rice and barley" or between "Bhad Sman and Rathantara Sman"?[23]

No. An option arises only when there is no erroneous cognition. If the cognition relating to wrapping the entire post is authoritative, then touching it is erroneous; and if the touching is authoritative, then the recollection is erroneous. When you posit an option, however, you then admit in part the authority of the touching, and its foundation is a Vedic statement. If that statement is admitted to be authoritative, then it cannot be partial. The recollection relating to wrapping the entire post, furthermore, is partly authoritative, and with regard to that part, it is not possible to presuppose a Vedic statement, because such a course is blocked by the cognition relating to touching the post. And therefore, so long as the latter is not erroneous, it is not possible to presuppose a Vedic text. And it is impossible to say that it is not erroneous in one part and erroneous in another part, for the same foundation has to be posited for the one part as for the other. If it is not erroneous in one part, then it should also be not erroneous in the other, because the authority of the Vedic text is the same in both. Further, that Vedic text does not work only in one part, for it is composed of specific syllables, and it is not possible to claim that it is an incorrect reading. Therefore, one cannot conclude that the erroneousness of cognition in one part is transferred to the other part. In the case of the former, however, one assumes that wrapping the entire post is based on a cognition resulting from poor learning, a dream, and the like, because it conflicts with a Vedic text. For there is no authority that would permit one to acknowledge its authoritativeness when it is in conflict with a Vedic text. Therefore, just as in one part one cannot assume a Vedic text, so also in the other part, because the reason for such an assumption is the same in the case of both parts; as also, given their mutual interdependence, because the one is defined by something other than itself.

What is this mutual interdependence?

If the text of recollection is authoritative, then touching the post is erroneous; and if the touching is authoritative, then the text of recollection is erroneous. This is what constitutes mutual interdependence. Between them, the foundation of touching is already established, while that of the text of recollection has yet to be established.[24] The latter is thus defined by something other than itself. Because its foundation has yet to be established, the authoritativeness of the text of recollection is not fully established. Because the latter is not authoritative, touching the post is not erroneous. And because it is not erroneous, the assumption of a Vedic text in support of that text of recollection is untenable, because that text lacks any authority.

If that is the case, is it then not true that, because the cognition of rice as the sacrificial material is also not erroneous, the Vedic text about barley would be untenable?

True, it would be untenable if that Vedic text were not directly perceivable; but it is directly perceivable. For what is directly perceivable cannot in any way be untenable. Because both Vedic texts exist, however, both of them are clearly distinct sentences. Of these two, through one we ascertain that the sacrificial material is only barley, while through the other we ascertain that the sacrificial material is only rice. And an act ascertained through a sentence cannot be rejected. Therefore, it is proper to have an option between rice and barley, as also between the Bhad Sman and the Rathantara Sman.

Therefore, it has been declared that a text of recollection in conflict with a Vedic statement is without authority. For the same reason, moreover, such injunctions as wrapping the entire post should be disregarded.

And because there is reference to motives. (*PMS* 1.3.4)

This topic relates to the greater strength of Vedic texts.[25]

Some, yearning to get the cloth out of greed, wrapped the entire Udumbara post. That is the origin of this recollection. Others, yearning to eat, took to the practice of eating the food of a man who has just purchased Soma. Some, trying to hide their lack of virility, took to practicing Vedic studentship for forty-eight years. So we surmise that it is from these that the recollections originated.

Or this aphorism may constitute a separate topic.

"The offering priest takes the cloth used at the Vaisarjana offering"[26] *and "They practice the gifting of the cloth wrapped around the post"*[27] *are authoritative, because their performers are the same.*[28]

With regard to this conclusion, we say that this recollection is not authoritative. It has a different foundation: some undertook these practices because of greed, and from that is derived this recollection. And this is a more appropriate explanation.

3

Because inference has a specific scope, the authority is limited by that. (*PMS* 1.3.15)

The authority of recollection and of practices is regarded as based on inference. They should be deemed to have authority only when they have the same restricted scope as the cause on the basis of which their authority was established. Therefore, the Holk rite and the like are to be practiced only by easterners; the hnnaibuka and the like only by southerners; the Udvabha sacrifice and the like only by northerners.[29] *This is similar to the specific arrangements of the hair tufts, some having three tufts and others five tufts.*[30]

Or rather, it is the dharma for all, because that is the general rule with respect to an injunction. (*PMS* 1.3.16)

The expression "Or rather" overturns the previous position. This kind of practice is dharma for all. Why? Because that is the general rule with respect to an injunction. The term "injunction" is derived from "It is enjoined by this," and means a Vedic text. It is inferred on the basis of a recollection. It goes against the rule to make it refer to a class or to an individual. There is no single common element among all the performers that could be indicated by some authoritative Vedic text and could be inferred. Therefore, it is the rule that the dharma enunciated by an injunction pertains to all. Why? Its authority consists of the statement: "Enjoined acts should be carried out." With regard to restricting its scope, on the other hand, there is absolutely no authority.

6.2 KUMARILA (SEVENTH CENTURY C.E.)

Kumarila Bhatta was perhaps the greatest theorist of the school of Vedic exegesis and one of the intellectual giants of ancient India. He wrote the most influential treatise of Vedic exegesis, which

was, however, a subcommentary on Sabara's commentary on the *Prva-Mms Stra*. Kumarila's treatise is divided into three parts: the *lokavrttika* covering the first section (*pda*) of the first chapter (*adhyya*) of the *Mms Stra;* the *Tantravrttika* covering the rest of the first chapter, as well as chapters 2 and 3; and the *upk* on chapters 4 through 12.

Although it is technically a subcommentary explaining Sabara's work, it is much more than that, and Kumarila frequently disagrees with Sabara's interpretations and presents his own ideas independently. In the extracts here, I give Kumarila's own views with regard to the authority of texts of recollection, which he takes to be on par with the authority of Vedic texts. On this he disagrees with Sabara, who is willing to reject some texts of recollection that are in opposition to extant Vedic texts as lacking authority. For Kumarila, all traditional texts of recollection must be viewed as authoritative and as based on Vedic texts. He also rejects the view, already found in Apastamba, that some texts of recollection are based on lost Vedic texts. He finds the whole notion of a lost Veda repugnant.[31] When actual Vedic texts cannot be found for a particular text of recollection, Kumarila assumes that there must be such a Vedic text found in various Vedic branches spread across the vast subcontinent (*viprakrakh*). Our inability to find them should not have any impact on their authority. The inference of the existence of a Vedic text as the foundation of a text of recollection relates to these dispersed Vedic branches, not to any hypothetical lost Veda.

Thus, Kumarila is against dismissing as unauthoritative any text of recollection that may contradict provisions of available Vedic texts. In such cases, we must assume that the text of recollection has the backing of a Vedic text still to be discovered. Thus, both are of equal authority, giving rise to an option. The only concession that Kumarila is willing to make is that one may opt to follow the provision of the extant Vedic text in preference to that of the text of recollection.

Kumarila, however, is willing to interpret *PMS* 1.3.3–4 as teaching that a text of recollection contradicting an extant Vedic text lacks authority, but for him these texts are not the Brahmanical texts such as the treatises on dharma but texts of groups outside the Vedic pale, such as the Buddhists.

(*PMS* 1.3.3–4: pp. 104–15) First Interpretation: All Texts of Recollection Are Authoritative

Here, we must express the following with respect to both these two topics.[32]

> Given that the Vedic foundation of texts of recollection has been firmly established above, even when they are in conflict with a Vedic text, how is it possible to recognize a different foundation for them?[33]

For Vedic statements are scattered across different Vedic branches and are only directly perceived by different individuals; they are not recited according to the order in which the dharmas of individuals are performed. So, fearing the loss of the fulsome Vedic tradition, texts of recollection were composed without quoting the Vedic texts in their original form, the Vedic texts being identified by means of writing down their content. These texts of recollection collect in one place the Vedic texts that are not directly perceived but are being disclosed by that very writing down of their content, which takes the place of the specific sounds of the original.[34] Here we have this analogy. When the teacher says, "This is stated in this text," whether it is actually recited or not, students accept it as true because of their confidence in that trustworthy person. In the same manner, the words of the authors of aphoristic texts, which take the place of a teacher's words, complete their task after simply presenting the Vedic texts that correspond to them. Thus one should not repudiate them simply because they have human authors, just as one does not when pointing out that sounds are produced from the palate and the like.[35]

For when men disclose the Veda, saying: “Such indeed is this Veda,” it is just the same whether it is disclosed by men who actually recite or by men who recollect.

Further, at a time when actual recitation is not taking place, the Veda remains in the reciters either as mental impressions alone or as recollections produced by that recitation.

Therefore, when those who express the content and thereby express the Vedic text covering the content of that text of recollection, that Vedic text is equal to a Vedic text that is actually recited. Based on what exegetical rule is it invalidated?

If, furthermore, there is a solitary text of recollection that is un-Vedic in its entirety—discarding just that one, texts other than that become integral parts of everyday practice.

All texts of recollection, my dear fellow,[36] when dealing with rites such as Vedic initiation, are seen to be founded on Vedic texts recited in the *Kaha*, *Maitryaya*,[37] and the like.

Then, if among these is found one solitary statement that is a dubious recollection, our tongue finds it impossible to say that it originates from a different foundation (see ch. 6, note 32).

When an expert in exegesis, furthermore, has invalidated a certain text of recollection, and soon thereafter a Vedic text belonging to another Vedic branch supporting it is discovered, then what will be the color of your face, you who take yourself to be an expert exegete?

In this way, that text will undoubtedly be caught in an unsettled condition of being both validated and invalidated.[38]

Let us take up this text of recollection regarding wrapping the sacrificial post completely (*pariveana*) that has been presented as an example of a text that contradicts a Vedic text enjoining the touching of the post.[39] Jaimini himself, in the *Chndogya-Anuvda*,[40] has explained (i) that this text of recollection is founded on a Vedic text contained in the *yyani Brhmaa*, and (ii) in its chapter on the Udumbara post, that the cloth wrapping the Udumbara post is clearly founded on an explicit Vedic text as a result of the following: “Among people belonging to the yyani branch, one shows the post having the cloth at both ends with its hem above,” and it is shown with the formula: “Vaiuta is indeed the cloth. r is indeed the cloth. r is the Sman chant.”[41]

Therefore, that is not an example of texts subject to invalidation, because it is founded on a Vedic text; for only an option is proper in this case, because the authority of both is equally strong.

Invalidation takes place, moreover, only when there is a contradiction. And there is no contradiction here, for the mere act of wrapping, to our mind, is not contradicted by the Vedic text regarding touching.

If, leaving aside two or three inches in the middle, the Udumbara post is wrapped around the other parts, why would the touching not take place there?

For the author of the aphorism does not say that the entire post should be wrapped; surely no one does the wrapping at the bottom of its ears.[42]

Even if the prefix *pari*, “completely,”[43] points to the wrapping of the post all around, still the injunction would be meaningful if it is done without wrapping it completely.

As to the assumption that the wrapping completely is based on greed, their greed would be even more satisfied with two cloths wrapping the bottom and the top halves.

And the text of recollection would have laid down two cloths of a silken variety, like the

ones women use to cover their lower and upper bodies, and not a single cloth without specifications of quality that the chanting priest takes.

[Section from 106, line 7 until p. 110, line 15 is omitted]

Being a Vedic student for forty-eight years also does not contradict a Vedic text because in that self-same text of recollection[44] it is presented as an alternative course, or rather because it is possible to take it as referring to another order of life.[45] Accordingly,

The statement "After studying the Vedas, or two Vedas, or even one Veda in the proper order" (*MDh* 3.2) is made after taking into account the capacity of the individual or his suitability for a particular order of life.

Gautama also presents the first alternative for those intending to assume the household life quickly: "To study a single Veda, he should live as a student for twelve years" (*GDh* 2.45), and then, in the context of the second alternative, gives the total of forty-eight years: "Or, in the case of all the Vedas, twelve for each Veda" (*GDh* 2.46).

With regard to the latter, we can say this. This rule is intended for people who are blind, lame, and the like and are thus incapable of undertaking the life of a householder.

They are forced to embrace either perpetual studentship or the life of a wandering ascetic. For that reason, this is stated at the beginning.

[Section from p. 111, line 1 until line 14 is omitted]

Therefore, we never see much of a contradiction between a Vedic text and a text of recollection, for it is between two Vedic texts that we see such contradiction; or rather, even that is never encountered anywhere.

Therefore, here either the aphorism describes the employment of a rite or else, with respect to the texts of recollection of excluded people, it states that they are to be invalidated.[46]

Jaimini, indeed, who imparts extremely beneficial instruction, has taught this to those who seek knowledge.

When one rite is found in a text of recollection and another in a Vedic text, then, given that they are in conflict, it is preferable to perform the rite given in the Vedic text.

Even in the case of injunctions given in perceptible Vedic texts, such as that pertaining to rice and barley, if someone carries out his activities throughout his life following just one alternative, he will never become the object of reproach.[47]

Therefore, even if a text of recollection has an equivalent authority, nevertheless people following an act laid down by a Vedic text do not incur any fault.

Let us take the statements in texts of recollection, which complete their task after teaching just

the enjoined acts without having cited the Vedic texts that provide their foundation. Given that to be authoritative, those statements require the manifestation through inference of corresponding Vedic texts, one should place much greater trust in an actual statement of the Veda because it has greater force, insofar as it is independently authoritative. Because of the resultant abundance of faith, one recognizes the act that should be more readily followed.

The meaning of the aphorism also should be construed in this manner. When there is a conflict between the provisions of Vedic texts and texts of recollection, what is "nondependent"—whether this is read as what is without dependence or as what does not need anything else to depend on—is, indeed, authoritative. This is done by supplying the word "authoritative" from the previous aphorism to both these readings.[48] Thus what is stated is only for the purpose of acknowledging simply the course of action to be followed at that time.

And, therefore, we will not accept the notion of an absolute rejection of such texts of recollection, given the distinct possibility that they may be based on Vedic texts found in a different Vedic branch. Nor would this hurt the performance of an act enjoined by a perceptible Vedic text. When, however, a Vedic text also comes to light somewhere within a different Vedic branch, a Vedic text that provides the basis for that text of recollection, then an option will, indeed, result, because both of them have equal force.

Is it not true, then, that, applying this very rule, one should not accept a provision in another Vedic branch that conflicts with a provision enjoined in one's own Vedic branch?

Yes, that is true—

> As long as it is known only through reports, it will not be accepted at all. When, however, one actually hears it, then it is not distinguished from that of one's own Vedic branch.
>
> In this way, therefore, this aphorism points out the distinction between a Vedic text and a text of recollection. The latter is not to be totally invalidated by the former, nor are they entirely equal.

Second Interpretation: Texts of Outsiders Are Unauthoritative

Alternatively, these aphorisms teach that those texts not accepted by experts in the triple Veda should be disregarded, by pointing out that they contradict Vedic texts and that there is reference to motives.

These include, first, the texts dealing with dharma and adharma accepted by Samkhya, Yoga, Pancaratra, Pasupata, Buddhists, and Jains.[49] They take cover in the shadow of the cloak of dharma mixed to a degree with Vedic material. Their sole purpose is to obtain obeisance, benefits, honor, and fame from people; they are compositions founded on reasoning—for the most part, perception, inference, analogy, and circumstantial inference—and containing features such as being contrary to the triple Veda, being incoherent, and apparent beauty. Because of their power demonstrated by the occasional success of a few mantras and medicines of theirs that are able to cure poison, to bring a person under one's control, to drive away someone,[50] to make someone mad, and the like, they teach various things mostly to earn a living, but that are scented by the perfume of a few things consonant with Vedic texts and texts of recollection, acts such as not injuring, speaking the truth, controlling the self, giving gifts, and showing compassion.

They include, second, texts that are completely outside and that contain eating practices mixed with the customs of barbarians.

Furthermore, this issue is not dealt with under another topic; nor is it an issue that does not need to be addressed, because it is something that is exceedingly well known, just like the cognition of the signification of words such as *gav*.[51]

> For if we do not assert that these texts are unauthoritative because we pay no heed to them, others, thinking that we are clearly unable to do so, would consider them all to be of equal authority.
>
> They will fall into the error of abandoning the killing of animals and the like prescribed for sacrifices, because of the beauty and easiness of those texts, their rational arguments, and the powerful influence of the Kali Age.

Or else, given that there is no difference insofar as they have been composed by Brahmans or Kshatriyas, even intelligent people, claiming that these texts are based on Vedic texts in the same way as the text of Manu and the like, may acknowledge a clear option between their prescriptions and those enjoined by Vedic texts and texts of recollection.[52]

> Therefore, even if some text of recollection of theirs is found to be in conflict with what has been enjoined by Manu and the like, nevertheless one may, in that matter, simply follow the former.
>
> For, without refuting all those that totally contradict the established path of the triple Veda, the purity of dharma will not be achieved.
>
> In support of their viewpoint, they also do, indeed, assert that it is accepted by great people; that, among other things, it has come down from their father and so forth; and that it is esteemed in distant lands.[53]

In this regard, the only reason for following a particular norm is simply one's faith in it, because all people follow customs of their fathers, grandfathers, and so forth. Now, with regard to those who acknowledge that texts of recollection, such as that of Manu, also have as their foundation lost Vedic branches, the Buddhists and others might easily say that their own texts are founded precisely on such Vedic branches. For who is able to limit the scope of statements in lost Vedic branches to just those texts? Therefore, so long as some people have adhered to something for a certain length of time and it has gained renown, it may appear to have the same authority when one perceives[54] it as having a foundation in lost Vedic branches, even when it may conflict with perceptible ones. For this reason the author states: "When a text of recollection conflicts with a Vedic statement, however, the former should be disregarded" (*PMS* 1.3.3).

First, because these texts were composed by particular men who were making the recollections, they themselves acknowledge that the texts are dependent on something external to themselves. And people who are close to them also know it, because they subscribe to teachings such as the contingent nature of words.[55] Furthermore, these people, like evil sons who detest their father and mother, do not acknowledge that their texts have the Veda as their foundation, simply because they cannot bear to concede that their texts are founded on the same authority,[56] and because they are ashamed to do so.

And one more thing—there may be a solitary statement in a text of recollection that would conflict with a single Vedic statement. All the statements of the Buddhists and the like, on the contrary, with the exception of a few statements dealing with self-control, giving gifts, and the like, are in conflict with all the fourteen repositories of knowledge.[57] They have been composed by people such as the Buddha, who have deviated from the path of the triple Veda and whose practices are opposed to it. And they have been handed over to deluded men who are outside the pale of the triple Veda and who have for the most part been banished into the fourth social class.[58] Thus they cannot be considered as being founded on the Veda. Besides, who can place his trust in a man who,

being a Kshatriya, has undertaken teaching and accepts gifts in contravention of his own dharma, thinking that he will teach the unsullied dharma? And it has been said:

> One should shun from afar a man who performs actions that thwart one's prospects in the next world. How can a man who defrauds his own self do what is beneficial to someone else?

For the Buddha and someone like him, moreover, this very transgression is thought to be an ornament, for which reason he says this:

> Whatever acts in the world are done due to the squalor of the Kali Age, may they fall on me; but may the people attain liberation.[59]

He is praised for precisely these kinds of virtues: "For the benefit of the world, first he assumed the role of teacher that is the province of a Brahman, thus transgressing the dharma of a Kshatriya; then he took upon himself also the violation of dharma by giving instruction on dharma to outsiders, which Brahmans, unable to transgress a prohibition, had not done. Thus did he show his loving kindness to others." All the people who have been instructed by and follow him, furthermore, act in contravention of what has been prescribed by Vedic texts and texts of recollection and are recognized by their deviant conduct.

> Therefore, given that the authors of the books, as well as those who accept them and those who follow them, contradict perceptible Vedic texts, the authority of these books is negated.

For, in the case of these texts that, in the manner already stated, are excluded from the Veda, it is not possible to infer a Vedic text as their foundation.

> Moreover, we never find that a particular Vedic branch has become extinct; and because, as explained above, the Veda is eternal, these books do not possess the foundation that these people seek.

For, unlike texts of recollection on Vedic initiation and the like, where there is unanimity among Vedic texts actually found in various Vedic branches, such unanimity is absent in the case of activities such as building Buddhist shrines, worshiping them, and giving gifts to Shudras, and we have already refuted the assumption that they have a different foundation.

> With respect to these documents, furthermore, we recognize quite a lot of other causes, such as greed. Once these causes are seen close at hand, there is no possibility of inferring another foundation.
>
> And when Buddhists and others engage in preaching dharma everywhere, they never present that preaching free of a web of reasons.
>
> Furthermore, unlike Gautama and others,[60] they do not acknowledge a foundation in the Veda, and they present reasons that are far removed from dharma.
>
> These are, indeed, people who "should not be shown respect even by word." For these

are “ascetics of heretical sects, individuals engaging in improper activities, and sophists.”[61]

These very kinds of books, furthermore, have been spoken of by Manu and others as texts that must be shunned:

> The texts of recollection that are outside the Veda, as well as every kind of fallacious doctrine—all these bear no fruit after death, for tradition takes them to be founded on darkness. (*MDh* 12.95)

Therefore, it is established that these kinds of texts that are outside the Veda should be disregarded in terms of their authoritativeness with respect to dharma.

CHAPTER SEVEN

Early Commentators

Within the literary tradition of the science of dharma, there was a transition during the second half of the first millennium C.E. from composing original legal treatises to writing commentaries on received treatises that had attained a high level of acceptance and authority. The exact dates of the early commentators are difficult to determine, but the best guess is that the extant commentaries were composed between the seventh and tenth centuries C.E. My designation of "early commentators" refers to those who lived during these four centuries.

We know from references in the extant documents of the period, especially in Medhatithi's extensive commentary on Manu and in later medieval commentaries and legal digests, that a large number of significant commentaries were written during this period. Unfortunately, very few have survived. These works show that this was a vibrant period of intellectual activity, with significant advances in jurisprudence and lively and forthright debates among authors.

The works of only four commentators from this early period have survived: Bharuci and Medhatithi (on Manu), Asahaya (on Narada),[1] and Visvarupa (on Yajnavalkya). With the possible exception of Visvarupa's, none of these commentaries is intact.

It is, of course, impossible to know the reasons for the disappearance of such a large number of significant works from the medieval manuscript tradition. I can offer a couple of hypothetical reasons, which cannot rise beyond the level of educated guesses. First, as already noted, a new genre of texts within the science of dharma came into being probably around the twelfth century C.E. This genre is generally called Nibandha or legal digest. The aim of the digests was to gather as many discrete texts from the treatises on dharma bearing on different topics as possible, and to arrange them topically. Their encyclopedic nature made it easier for a reader to navigate the various topics of dharma and to find normative texts bearing on each. It also tended to flatten the intellectual landscape, the intent being not to highlight changes, differences of opinion, and conflicts but to give a unified and often uniform theological presentation. The numerous citations are interspersed with sparse comments. These digests may have made the preservation and copying of ancient commentaries less important. Second, many, though certainly not all, of the medieval commentaries appear to be meant for students working their way through the Sanskrit text. They are short and concerned more with grammar and the meaning of individual words than with larger issues of jurisprudence. One can see this starkly by comparing the long and learned commentary of Medhatithi with the parallel medieval commentaries on Manu. The intellectual milieu, with some notable exceptions we will consider below, within the legal tradition was not conducive to heavy intellectual tomes. The manuscript history of Medhatithi's works itself demonstrates this disregard. In fourteenth-century northern India, it was impossible even for a king to procure a complete or undamaged manuscript of his commentary. The need to be concise and to address an audience not of experts but of the uneducated is illustrated by a verse at the very beginning of Vijnanesvara's commentary on Yajnavalkya's treatise. He calls his own commentary one of "measured syllables" (

mitkar), intended to enlighten the uneducated and children (*blabodha*), and he contrasts his composition to that of his predecessor Visvarupa, whose commentary he calls verbose (*vikaa*).

So, what we see in the following extracts is a small glimpse of a vibrant intellectual tradition. We must be thankful that at least this much has survived the ravages of time and neglect.

We can also see the indebtedness of these jurists to the labors of the Vedic exegetes examined in the previous chapter. The arguments about the epistemology of dharma presented by these authors echo those of the exegetes, except that the jurists encounter greater difficulties in maintaining that all dharma should be based on Vedic injunctions. This principle, already hard to maintain within the ritual realm with which the exegetes were concerned, becomes almost impossible to sustain when applied to the broad areas of law and jurisprudence. Medhatithi in particular acknowledges this and concedes explicitly that not all of what is taken to be dharma is actually based on the Veda.[2] Others, even though they stick to the party line, admit diverse sources of dharma, including the norms of various professional and ethnic groups and even the edicts and orders of the king.

Authors writing in the second half of the first millennium were much more interested in the epistemological issues relating to dharma and law than those writing in the first half of the second millennium. Both Visvarupa and Medhatithi have extended discussions of these issues. Thus, Visvarupa's commentary on Yajnavalkya 1.7 covers fourteen printed pages, while Vijnanesvara's commentary is limited to just six lines! Medhatithi's commentary on the parallel verse of Manu 2.6 covers twelve printed pages, while later commentators spend just a few sentences to explain the grammar of the verse (see ch. 8.1).

In the back of their minds, both Visvarupa and Medhatithi have the Buddhist scriptures in view; they form the subtext to their arguments.[3] They have to make room for the authority of texts of recollection, specifically the treatises on dharma, without opening the door to Buddhist and other sectarian scriptures. The authors writing a few centuries later, such as Vijnanesvara and Apararka, hardly mention the Buddhists; they were no longer a living presence.

7.1 BHARUCI (SEVENTH CENTURY C.E.)

Bharuci[4] is the earliest commentator of a treatise on dharma whose work has survived. In fact, until recently his commentary on Manu was known only through references and citations in other works. An incomplete manuscript was discovered in Trivandrum, Kerala, and was translated and edited by Derrett (1975). The extant commentary begins, unfortunately, at chapter 6. Thus we do not have his commentary on the important verses of the second chapter, in which Manu deals with the epistemology of dharma. Fortunately, Medhatithi provides some extracts from Bharuci's commentary that bear on the epistemology of dharma.

Medhatithi refers to Bharuci as *vivaraakra* (see Derrett 1975, I: 10) the author of the *Vivaraa* (*Exposition*), which was apparently the title of Bharuci's commentary. Medhatithi, explaining the many alternative interpretations of the authoritativeness of acts given in texts of recollection, at one point says that Bharuci has explained this in detail: "These and other alternatives have been examined by the author of the *Vivaraa*" (see p. 130). So it is clear that Bharuci had an extensive commentary on Manu's verses dealing with epistemological issues. In commenting on *MDh* 2.6, Medhatithi cites an extended passage from Bharuci's commentary on this verse. This is given in section #1.

In his commentary on Manu 7.13 (section #2), Bharuci is basically unwilling to accept the literal meaning of Manu's verse that permits the king to establish a dharma. The alternative interpretation he suggests is interesting in that he accepts the existence of a worldly dharma (*laukikadharma*) side by side with the Vedic dharma. A similar position is espoused by Medhatithi. Implicitly, then, not all dharma is based on the Veda.

1

It has been argued that the Hawk rite and the like[5] are adharma, because they are forbidden. That is true. Nevertheless, even though they are forbidden, for a person who has gone beyond the purview of the prohibition "One should not kill living creatures,"[6] because of his excessively fierce hatred, these rites, when they are being performed,[7] produce the joy linked to the killing of his enemy. To that extent, therefore, one cannot deny that dharma is based on the Veda even with respect to rites such as the Hawk.[8] Even in the case of prohibitions, it is a man bent on killing out of passion who is directed to heed the prohibition. To implement a prohibition only means not implementing what is being prohibited.

In the case of the animal dedicated to fire and Soma and similar rites, however, there is no prohibition of killing at all, because what the prohibition prohibits is the common killing found in the world that is prompted by hatred. Killing sanctioned by scripture and prompted by injunctions, however, does not fall within the scope of that prohibition, because its objective is achieved in its application to common killing found in the world. It is not possible, furthermore, through inference from the particular to the general[9] to deduce that Vedic killing causes sin just as common killing found in the world does, insofar as both share the characteristic of killing. This is because the reason something causes sin is not killing as such but the fact that it falls within the scope of a prohibition. And we have already noted that there is no prohibition with respect to Vedic killing. (fragment cited by Medh on *MDh* 2.6; Jha p. 62)

2

> Therefore, when the king issues a dharma for those he favors or an unfavorable one for those he does not favor, one should not cast doubt[10] on that dharma. (*MDh* 7.13)

The king is certainly not the cause with respect to the origin of the dharma of social classes and orders of life, because dharma and adharma are defined by scripture. In that way, furthermore, there would be the absence of a general norm, and there must be a scriptural text that creates general norms.[11] Accordingly, this has been repeatedly stated, and anything contrary is untenable. This is because from the context one must understand that the text is aimed at praising the king. Alternatively, this scriptural text should be understood with reference to worldly dharma.[12]

7.2 VISVARUPA (EARLY NINTH CENTURY C.E.)

Visvarupa's *Blakr* (*Child's Play*) is the oldest extant commentary on the text of Yajnavalkya. Although Vijnanesvara, the twelfth-century author of the most celebrated commentary on this text, calls Visvarupa's commentary "verbose," this description only applies to his commentary on Yajnavalkya's first chapter dealing with customary practice (*cra*), which extends to 201 printed pages. His comments on the second chapter dealing with legal procedure (*vyavahra*) are quite brief, only 98 pages. He was evidently not much interested in the subject, and this is evident when we compare his commentary with that of Vijnanesvara, whose commentary on legal issues occupies 180 printed pages, while his commentary on customary practice extends to only 112 pages.

Visvarupa was an expert in Vedic exegesis, and his arguments reflect the thinking of Kumarila, whom he actually cites and with whom he sometimes disagrees. But his language is much more difficult and opaque than that of either Sabara or Kumarila. Ganapati Sastri, the editor of Visvarupa's commentary, refers to several subcommentaries, none of which has been published. I

have been able to obtain copies[13] of one, *Vacanaml* (*Garland of Teachings*), which I have used profitably in understanding the argument of Visvarupa. The subcommentary shows that some of Visvarupa's sentences are so brief as to be almost aphoristic in style. I cannot, nevertheless, claim to have cracked his code completely.[14]

At the outset of his commentary Visvarupa presents an extended objection to the authority of texts of recollection by an unnamed opponent. Given the detail and extent of this argument, it is not unreasonable to assume that Visvarupa is here citing or paraphrasing a historical opponent. An interesting aspect of Visvarupa's response is that one can infer or assume a series of injunctions that are not actually found in the Vedas from a single injunction that is actually found. Thus, from the injunction that one must engage in daily Vedic recitation (*svdhyya*), Visvarupa argues the existence of the following injunctions: (1) to teach, because if one is not taught one cannot recite; (2) with respect to qualification, because an unqualified person cannot be taught; (3) to initiate a person, because one cannot teach without initiating the pupil; (4) to produce offspring after learning the Veda; (5) to get married; (6) to have the wife next to oneself in performing rites; and (7) to approach the wife sexually during her fertile season. The opponent actually calls Visvarupa out on this point, saying that if injunctions can be assumed in this way, all the rules found in texts of recollection are nothing but inferences.

1

Surely, this determination of the definitional characteristic of dharma[15] *appears to lack a foundation.*

You illiterate in sacred scriptures! Don't speak like that.

> Veda, text of recollection, practice of good people, what is pleasing to oneself, and desire resulting from right intention—that, according to texts of recollection, is the root of dharma. (*YDh* 1.7)

For if they had said that texts of recollection and the like are the foundation of dharma without regard to the Veda, then these texts would lack a foundation. When, however, these texts also are not entirely unconnected to the Veda, then talking about the lack of a foundation is idle chatter! They are authoritative, moreover, insofar as they are based on the Veda. Therefore, it is fittingly stated: "that, according to texts of recollection, is the root of dharma." Accordingly, Manu states, "as also the recollection and conduct of those who know it" (*MDh* 2.6).

The meanings of "Veda" and "text of recollection" are well known. "Good people" are persons who are free from desire and devoid of pride and the like, and who know the meaning of the Veda and put it into practice. Their practice aimed at an unperceived object is the "practice of good people." Accordingly, Vasistha states: "Now, the cultured elite are free from desire. Dharma is without a tangible motive" (*VaDh* 1.6–7). And because it does not form a composed text, it is mentioned as distinct from texts of recollection, like Brahman and wandering ascetic.[16] This fact, however, makes it similar to acts enjoined in sundry texts of recollection.[17] "What is pleasing to oneself" means something that is not in conflict with the Veda and does not involve violence, such as a person taking to renunciation when his family is falling to pieces.[18] Due to fear of uncertainty, however, it has been mentioned as distinct from text of recollection and practice. We will state how this is so when we describe that order of life.[19] "Desire arising out of right intention" is the generation of joy by a person who does not want to harm himself, as, for example, limiting himself to one of two alternative courses. It is mentioned as distinct, however, lest someone suspect that it is of human origin because it proceeds according to one's desire. The rest is clear.

Alternatively, the term "right" qualifies each term separately. The fact that the Veda is right can be ascertained by analyzing its statements. Texts of recollection are right because of their restriction to those founded on the Veda.[20]

Alternatively, by the statement "to oneself" is intended the dharma of one's family, that is, the practice of one's father and so forth. The qualifications "of good people" and "aimed at an unperceived object" should be applied here also. Accordingly, they say:

> The path trodden by his fathers, the path trodden by his grandfathers—let him tread along that path of good people; no harm will befall him when he travels by that path. (*MDh* 4.178)

"Pleasing to oneself," however, is "satisfaction of oneself" (*MDh* 2.6). That also is a foundation of dharma. Now, what precisely is "pleasing to oneself"? It is "desire arising out of right intention." One man, however, may ascertain the truth merely by being instructed by a reliable person, while another will do so by understanding the foundational authority. As long as such a person has a desire that has undoubtedly arisen out of right intention, then what is pleasing to his self should be recognized as a foundation of dharma. This is unimpeachable even in the case of men with motley thoughts, because desire is restricted by the fact that it must have arisen from right intention. The rest is the same.[21]

Alternatively, the phrase "what is pleasing to oneself" is the defining characteristic of liberation; and the phrase "desire arising out of right intention," of success and pleasure. That of dharma has already been stated.[22] Now, all this is taught in the authoritative texts of recollection. And because the latter are founded on the Veda, intending "Veda alone" it is said: "that, texts of recollection say, is the foundation of dharma." Further, it is not a fault that the verse presents diverse aims, because they are based on reasoning.

[Arguments of Opponents]

From where,[23] *however, is the knowledge derived that texts of recollection are founded on sacred scripture? To begin with, we do not find Vedic statements that provide the foundation for all texts of recollection. Pointing to a few statements, however, is common also to false scriptures.*[24] *Further, the Veda itself is not able to teach that it provides such a foundation. The incapability of inference and so forth, on the other hand, is quite well known. Alternatively, inference and so forth may apply to its opposite, because it is untenable that the Veda in its entirety provides such a foundation.*[25]

First of all, the Veda in the form of injunctions cannot be the foundation, because we do not find such injunctions and because it would make the texts of recollection useless. That is to say—

> *When a perceptible Vedic text in an injunctive form is available, moreover, a text of recollection becomes useless. Then the authors of Kalpas*[26] *would be creating their compositions for an insignificant purpose.*
>
> *If it is maintained that texts of recollection are for the purpose of collecting scattered Vedic statements, that is untrue, lest the character of being a text of recollection be applied also to the texts of the Soma sacrifice,*[27] *because they have the same characteristic.*[28]

[section from p. 14, line 11 to p. 17, line 14 is omitted]

Thus, to begin with, the claim that texts of recollection are founded on scattered Vedic injunctions is baseless.[29]

Mantras and explanatory statements, on the other hand, cannot provide a foundation simply because they are intended for something else.[30] *Furthermore, a mantra is given within a particular context or outside of such a context. Now, a contextual mantra is clearly intended for something else. The other, the noncontextual, also cannot serve as a foundation, because we do not accept the thesis that indicative signs*[31] *lacking an explicit statement contain applicatory injunctions. Given that it is useful in the sacrifice of murmured recitation and the like, the injunction to perform Vedic recitation also is neutral,*[32] *because it does not require anything to supplement it.*

Those explanatory statements that are recited without commencing a ritual act, on the other hand, do not provide a basis because (i) before an injunction has been formulated, their reference cannot be ascertained; and (ii) when an injunction has been formulated, they are intended for it.

Someone, however, in order to establish the validity of acts linked to mantras and explanatory statements, could argue that they are founded on sundry injunctions that are presupposed in accordance with them. So, for example, in the mantra devoted to invoking fire, "I begin the sacrifice to you…," this illustrative statement: "You are like the first drink in a wasteland…," which cannot be reasonably accounted for according to prevalent usage, formulates another injunction, "Watering places should be created," in order to establish itself as correct.[33] *Likewise, because even in the explanatory statement "Therefore, the lesser follows behind the superior as he goes" (TS 5.1.2.3), a cause is indicated for the donkey following the horse, in order to establish it, they argue that it provides the foundation for the action enjoined by an inferred injunction, such as: "A superior should be followed."*[34]

That is also unsubstantiated. Even an expression[35] *originating from a mistake may become the reason to find a basis for an enjoined act. If it is asked how there can be a mistake, we reply that it is caused by this very misapprehension*[36] *of the object of a sentence.*

What conflict could there be if it has its basis in reality?

One is forced then to acknowledge the reality even of such things as "a mass of consciousness."[37] *And therefore, given that it would result in the denial of an enduring self, it would be difficult to sustain the practices enjoined in the Veda.*

Should you argue: "Let it be so!"—who, indeed, would make the Veda unauthoritative by resorting to assumptions, when the authoritativeness of the Veda can be convincingly accounted for without any kind of assumption? Furthermore, as the fact that statements resulting from error and made by those suffering from an eye disease provide a basis for actions is something to be rejected, so also are the statements of these; hence there is no fault.[38] *Even in the case of an assumption, there is this unavoidable consequence that such statements fall outside the category of texts of recollection as not aimed at the person, because what is included within the words pertaining to a fruitful activity has that itself as its aim.*[39]

The capacity of names to provide a foundation, on the other hand, is totally out of the question, because they are useful simply for the connection between the subsidiary elements and the fruits.[40]

What was stated above also explains the issues relating to taking lost Vedic branches as the foundation, for even those that are lost should necessarily be of the same kind. Furthermore, the loss itself would have to be assumed without any authoritative evidence, for the loss of Vedic branches is not possible, because we do not find any Vedic branch of that sort.[41] *In all four Vedas there are some branches that are actually being recited, and in not even one of them do we find anything similar to the dharma prescribed in the texts of recollection. It is improper to take the distinction of Vedic branches to be based on their radical difference from each other. For the Maitrya branch is not radically different from the Khaka.*[42] *Or, in making one portion of a Vedic branch the foundation, one would be making an enormous and unprecedented assumption. Making the lost Vedas the foundation, however, is not very smart, given that the four Vedas are well known. Further, it would have the absurd implication that there were no texts of recollection prior to that loss. Or, if the recollecting was carried out from fear of a loss, then even the daily fire sacrifice and the like*

would have the character of rites based on texts of recollection. Therefore, this view is unsubstantiated.

There are, however, some who think that texts of recollection also are authoritative insofar as they are eternal, just like the Vedas, stating: "They have the appellation of 'Manu' and the like only because they were taught by them." Surely, these unbridled people should keep their mouths shut. For even if they are not subject to annulment, the Veda is the authority because it is not composed by a person, while the claim here that those texts were not so composed is foreign to the whole world. And if that were so, it would be difficult to remove the same characteristic from scriptures of evil people. Should you argue, "Let it be so," then say good-bye to the authoritative treatises of recollection! The absurd implication would be that even wells, parks, and the like, whose creators are dead, would be similarly without creators simply because they are currently invisible. Further, it would make us conclude that the statements of Manu and others, such as "all that has been taught in the Veda" (MDh 2.7), are lies. Or else, by taking away their fame, one must take these in some way to be explanatory statements through a labored assumption.

Vedic schools[43] *such as the Kaha, furthermore, preserve each its respective Vedic branch, while we have no knowledge of Vedic schools such as the Mnava. Further, it is not possible to say that, like the Chndogya Brhmaa, the members of these very Vedic branches retain it in their memory, because these schools are not integral to any Vedic branch at all. Anything that we find retained in the memory by people belonging to Vedic branches is there not as the Veda but as a text of recollection, in the same way as a Vedic supplement.*[44] *And this gives rise to a lack of regard for vows and recitation.*[45] *And one is forced to say that these texts of recollection are not eternal.*[46] *Now, if you should argue that only a few authored by Manu and the like are such, the absurd implication would be that those produced by Narada and the like are unauthoritative.*[47] *Should you argue, "Let it be so," then you should point out a specific reason for it. Today, moreover, one would not have regard for a composed text of recollection such as that of Baudhayana, as one would for that of Manu and the like. On the other hand, with regard to the argument that all have emerged without effort from the mouth of Brahman,*[48] *it is utterly dense, like the instruction of the kya sage!*

Furthermore, if we were to grant the eternality of texts of recollection, there would be an interruption of the tradition, because of the absence of an injunction with respect to their study.

Surely, there is: "This[49] should be studied diligently by a learned Brahman" (*MDh* 1.103).

That does not enjoin the study of the entire text of recollection, because the term "this" refers to the original text, and one would be incapable of doing this with respect to the original, because it would be contradictory.[50] *And if it be argued that from the meaning of this injunction, "should be studied," one can make this deduction, then these texts of recollection would not be studied, because (i) an uninitiated person is equal to a Shudra; (ii) it is studied by a person who has been initiated for the sake of the Veda; and (iii) it is said that they teach only a few acts, such as the twilight worship. And for a person who has already studied the Veda, one must expound such things as returning to the teacher's house. If the study amounts to merely recitation, however, because that also has an invisible purpose, it is difficult to establish a tradition with respect to a text of recollection.*

If, however, the texts of recollection were to be founded on the Veda, such study may well come about in some way, because it explicates the injunction regarding engaging in one's daily Vedic recitation.[51] *That this very thing is difficult to establish we have already stated.*

In that way, with your broken net of fantasies, the associates with intelligence clever at rebuttal[52] will not be captured. Now, who could possibly maintain that texts of recollection are authoritative insofar as they are founded on the Veda, in view of the fact that, because they have an unbroken tradition, texts of recollection are also independently authoritative, just like the Veda? Nor can the faults noted above be extended to this case, because one does not accept the eternality of the textual source. Further, textual sources are not all that useful, because there was no time period when the practice of rites enjoined in texts of recollection was nonexistent. The reason is this: in precisely the

same manner that agriculture and the like are observed from worldly practice to be associated with specific results and the means to achieve them, so also are the Eighth-Day rite and the like. There is, however, this much of a difference. Agriculture and the like produce results that are imminent but uncertain, while the Eighth-Day rite and the like produce results that are not imminent but certain.[53] On the basis of this alone it is not possible to say that the latter belongs to the worldly sphere, because of this very determination of their distinction derived from different epistemic sources. Should you argue that this distinction is an error—we reply: no, it is not an error, because we have eliminated any other epistemic source, and because one recognizes it as firmly established.[54] And if it is supposed to be an error, one would also have to suspect that what is clearly not Veda has been accepted as Veda. Precisely as the cognition "This is Veda" is not said to be an error even though it pertains to worldly discourse, because it recalls the Veda's property of signifying, so one must understand also that the results and means presented for rites such as the Eighth-Day rite impose a restriction on their own proper form.

Further, their capacity to bring about the results cannot be called nonworldly because it is imperceptible, as in the case of the capacity of words. If one argues that the latter is so because one cannot account for the cognition in any other way, that is the same also here, because its cognition is firm. For just as words, because they produce cognitions, provide the reason for assuming that capacity, so also do acts that are the causes of conventional cognitions. Hence it is without fault.

Alternatively, to what does this imperceptibility here pertain? To begin with, the Eighth-Day rite and the like, along with all their subsidiaries, are perceived as they are being performed by other people. And there the terms "Eighth-Day rite" and the like have meanings derived from their etymology, just like the term "Veda." Further, it is only from their performers that one learns that their performance causes a particular result, in the same way as one learns the particular form of these rites. There is nothing, furthermore, to preclude their application to their correlates as duly postulated due to the impossibility of otherwise accounting for the well-established status of their performance, in the same way that a term has the capacity to bring about the cognition of the meaning associated with it.[55]

Therefore, it was stated that texts of recollection are independently authoritative. Accordingly, he states: "He presented in textual form acts that were not contained in written works."[56] Sacred scripture also, after introducing "If from the c," and after saying, "from the Yajus; from the Sman," states: "If unknown." And tradition states: "And what is unknown is what is in texts of recollection." [57] That is impossible if they were founded on the Veda, because then it is impossible for there to be something totally unknown. For it is not possible to state that something is unknown while describing it as having a known foundation. If, on the other hand, it is viewed as unknown with respect to other people, it is an overextension.[58] But there would be no conflict under the thesis that texts of recollection are independently authoritative.[59]

Don't speak like that, you reckless man! The country has a king! Clearly, women married to virtuous men are not independent.[60] *For it cannot be that a worldly practice lacking an authoritative source should support the truth of an act found in texts of recollection, lest such a condition be ascribed also to rites such as the worship of Buddhist shrines. If you object that this is different from the previous because the latter is practiced by those who do not know the Veda—what possibly is the use of those who know the Veda for people who maintain the independence of texts of recollection? The Veda certainly does not become authoritative because it is accepted by those who know it. Nor do agriculture and the like based on worldly activities depend on those who know the Veda. If you argue that these produce visible results—how else could there possibly be a basis in worldly activities? For the world is unable to engage in something that has no visible result without depending on sacred scripture. Now, you may say that it is dependent on worldly practices, just like the words expressive of meaning, but that is untrue. There the impossibility of perceiving a meaning is the basis of the supposition. But here, why would it be impossible, because we notice*

worldly practice even in such things as the worship of Buddhist shrines? Nor does a difference come about because they are presented in texts of recollection composed by experts such as Manu, because these texts are not different from scriptures of evil people insofar as they are based on worldly practice.

Surely, we have stated at the outset that the Veda is the authority. Those who perform the New- and Full-Moon sacrifices and the like enjoined by it, moreover, are experts in dharma, and they are at the same time performers of the Eighth-Day rite and so forth. Therefore, these are different from the others, that is, the worldly practices.

That is not so, because this takes place most frequently in just the opposite way. Those who know the Veda, for that very reason, show no interest in dharma relating to worldly practice, because they are without aspirations. Worldly practices with respect to which a foundation in the Veda has been abandoned, however, because there is no other course, must be totally based on worldly practice. Should you counter, "Let it be so. There is an obligation to practice them also"—if that is so, then their authority is easily sustained.

In that case, because of the very fact that persons performing things enjoined by Vedic rules are the same as those engaged in worldly practices, one should infer the cause capable of promoting that behavior.

Haven't we already stated that such a cause does not exist?

That is precisely why it should be inferred.

Does one infer even something that is nonexistent?

When an indicator leading to inferential knowledge is present, surely one cannot plausibly say that it is nonexistent.

Well, what is that indicator?

Among people of the three social classes, we see worldly practices that are without visible results, practices that are founded on Vedic injunctions. This[61] is also of a similar kind. Therefore, here too, we assume, there is a Vedic injunction providing its foundation. It is also not true that, because it would result in a cognition as in the above case, there is thus a conflict with the qualification, because nonperception does not create an obstacle. In the other kind of worldly practice,[62] however, there is a dissimilarity, because of the absence of invariable concomitance.

Does a Vedic injunction that is not cognized at all promote a worldly practice?

What is the point in this futile deliberation? Of course, it does. And it is not uncognized, because it is inferred generally and specifically. For obligatory acts necessarily presuppose their causes, and precisely in this way they also reveal their respective causes. And in this manner the performance of acts enjoined by injunctions becomes possible. When we take them to be independently authoritative, however, there is the performance of just an activity.[63] And in that case, the consequence would be the absence of results of those acts whose results have no connection to their immediate outcome.[64] One cannot say that the result comes into being at a distant time via the production of mental impressions, because that is obviated by the fact that the activity is said to be worldly, and because of the absence of a cause for that supposition. For this very reason, this viewpoint[65] is superior. Further, we do, indeed, find actual references that support this.[66]

This viewpoint is indefensible. Clearly the means of proof cannot be gathered from what is to be proven. For how can there be performance in the case of a person who assumes a cause based on the fact that otherwise the performance could not be accounted for? A performance does not take place prior to the assumption of a cause; and when the performance has taken place, it is pointless to assume a cause. If, however, someone should say:

There is no fault when, after seeing the performance carried out by other people, someone infers a cause, because otherwise that performance cannot be accounted for, and on the basis of that starts his own performance.

That is incorrect, for it is not the case that a performance carried out by other people cannot be

accounted for, because that has already happened! With respect also to the argument that inference is predicated on the fact that the performers are the same, there too the reason given is of no use. For rites such as the New-and Full-Moon sacrifice do not obtain their character as dharma because they are performed by the three social classes, but because they are enjoined in the Veda. And this latter factor is wanting in the case of the activities under discussion. If someone should argue:

Their performance, insofar as it has no visible motive, makes it dharma.

That also is fallacious reasoning, because even in non-Vedic areas we see the performance of wicked dharma. If you argue—

That is due to error.

If that is the case, it is still fallacious reasoning because here too, the hazard of error is present. If someone should argue:

There is no error because these actions do not face annulment.

That also is unproven, for annulment is demonstrated in the case of actions given in texts of recollection that are opposed to the Veda.[67] *If someone should argue:*

Where such an annulment is absent, it is authoritative.

That too is difficult to understand. Every performance, moreover, that is not prescribed by the Veda is, indeed, opposed to the Veda and does have a visible motive.[68] *Therefore, this is also an unsubstantiated viewpoint.*

Statements such as "all that has been taught in the Veda" (MDh 2.7) *are incoherent. In assuming a cause without a valid means of proof, however, it is like a series of blind men, each following the other. References to authoritative texts*[69] *take on validity, however, when they are made in accordance with sound reasoning. This is not the scope of the statement: "The texts are direct injunctions, however, because they refer to what is not already known. Therefore, the eating would be in accordance with direct injunctions" (PMS* 3.5.21).[70] *In this manner should one explain in detail all that is to be critically examined.*

Texts of recollection, however, are altogether unauthoritative, given that one cannot identify a causal basis for them simply because they have the nature of recollection, just like the recollection of the daughter's son by a barren woman.[71]

[Author's Response]

To this we respond. It is not right to render texts of recollection unauthoritative in this manner through a net of fanciful arguments concocted by yourself. For Manu and others have themselves made statements such as the following:

"All that has been taught in the Veda" (*MDh* 2.7).

"Veda is the root of dharma" (*GDh* 1.1).

"Practice is enjoined with respect to all people, because it is based on the authority of sacred scripture."[72]

"Dharma is taught in each Veda. In accordance with that, we will explain it. What is given in texts of recollection is the second" (*BDh* 1.1.1–3).[73]

"Veda, text of recollection, practice of good people" (*YDh* 1.7).

It is, moreover, improper to search for some other foundation by transgressing this kind of agreement. And this agreement is proper with respect to this matter, because there is no other source of knowledge, given that there is the restrictive rule: "Dharma is only that which is disclosed by a Vedic injunction" (see *PMS* 1.1.2). Assuming an error and the like, furthermore, cannot be accounted for, because that would conflict with the acceptance by those who know the Veda. Nor can their acceptance be accounted for if such practices have a different foundation, like practices such as the worship of Buddhist shrines. Alternatively, if one assumes an error and the like, it would result in even the Veda being not the Veda. Nor is a foundation in the Veda inconceivable, because a

text of recollection states: "For Manu and so forth were knowers of the Veda."[74] This is also not the result of an error, just like the texts of recollection stating the authorship of texts of recollection.[75] It is well stated, therefore, that texts of recollection have the Veda as their foundation. He also states:

> Because of an error, because of personal experience, because of a man's statement, because of an intent to deceive, and because the thesis corresponds to what was seen—Vedic injunction alone appears the most appropriate.[76]

Did we not say already that it is difficult to account for this very foundation in the Veda? For we have stated the absolute impossibility of accounting for the fact that the Veda is their foundation.

What you said is not right, because the fact that the Veda is the foundation is accounted for through the means of valid cognition. For we discern the fact that texts of recollection are founded on it based on the argument that the acts enjoined by their rules cannot be accounted for otherwise. That is to say, when it is stated, "One should recite the daily Vedic recitation," given that both that and "One should teach the Veda" cannot be accounted for, one assumes there another injunction.[77] For the injunction "One should teach the Veda" directs recitation in order to account for itself. The injunction on recitation also, whose practice is accounted for only because of the directive given by the former, would become inoperative without assuming another rule on eligibility.[78] Further, it is not possible for the teacher to teach the student without first initiating him. Here, in order for the two injunctions to be tenable, one infers another injunction: "One should initiate Brahmans and so forth." In this manner, at a time after the learning of the meaning of the Veda when the activities of the two injunctions have been carried out, there is the expectation of the injunction with respect to begetting offspring immediately thereafter. Because this cannot take place in the absence of a wife and because sexual pleasure is the only means of accomplishing it, there arises another injunction: "He should marry a woman possessing the proper marks" (*YDh* 1.52). Further, because the performance of the daily fire sacrifice and so forth requires a wife and her close presence, there arises the injunction about not evading her: "He should offer sacrifice accompanied by her." So also injunctions such as: "He should approach during her season" (*GDh* 5.1). Following this very process, one should assume everywhere injunctions that teach a principal act along with those that give the qualifications needed to perform it. Likewise, their connection to subsidiary elements should be ascertained by means of direct statements and so forth, both the perceivable and the inferred.[79] We will, however, give a meticulous exposition of it in this very commentary on the text.[80] That being the case, furthermore, there is no difficulty in sustaining the authority of texts of recollection.[81]

Is it not true that, if this is the case, it would follow that rules given in texts of recollection are to be understood by implication? Thus, for example, when it is said, "He should make the fire offering with ghee" and "He divides with the Sruva spoon," there arises another injunction: "He should take the ghee with the Sruva spoon." For as a fire offering made with ghee containing four portions requires a special instrument capable of dividing, and thus calls for a Sruva spoon and the like, similarly, the injunction regarding the Sruva spoon, "He divides with a Sruva spoon"— an injunction that, by following its own capacity, conforming[82] *to its referent that is a liquid substance, and after taking into account the fact that it is well-adapted to that special quality of ghee—discloses another injunction: "He should take the ghee with the Sruva spoon." So the implication would be that all injunctions contained in texts of recollection are of this type.*[83]

It is not so, because these rules determine only ritual applications. For only an injunction that is generative or that causes the performance of the enjoined act is the cause of the instruction; not, however, also an injunction that restricts an injunction already generated to just this particular purpose. Thus, there is no contradiction.

In that case, then, the logical consequence would be that even those rules of ritual application given in texts of recollection would become devoid of the character of being given in texts of recollection.

That is not true, because texts of recollection, insofar as they generate ritual acts, are different.

What is the report on the Eighth-Day rite and the like? It is not the case that, in their absence, no injunction at all is possible, because the injunction to recite one's daily Vedic recitation and the mantras relating to it are established.

To this we say: here also, the injunction to recite one's daily Vedic recitation containing mantras that name[84] the Eighth-Day rite and the like is not established. For a naming is not possible when there is an association with the sacrifice of murmured recitation and the like. Nor is there a totally clear cognizance of the rule of ritual application by the strength of which the naming would be obstructed. It is possible, moreover, to teach the connection between the ritual substance and the divinity, and also the fact that a person is entitled to perform the rite, by means of the mantras, while the injunction on Vedic recitation connected to them is not established, and one recognizes that it should be performed. The manner in which the subsidiary elements are connected, however, has already been stated.

Is it not true that, in this way, because there is no distinction of the names, one would infer just the single Eighth-Day rite by means of all the mantras?

It is not so, because of the difference in their capacities.[85] For mantras teach rites according to their capacity, and there isn't a capacity that would teach a single rite. Therefore, the distinction among rites such as the Eighth-Day rite is established. Further, this being so, a single person alone is not responsible for performing activities such as the Eighth-Day rite that are learned from all the Vedic branches. It is certainly not the case that when someone performs a rite learned from a single Vedic branch the sin caused by its nonperformance would not be removed. For if the rites were given in textual form, one would not have accomplished one's task by carrying out one rite among different rites even though they bear the same name. The reason for this is the fact that (i) one recognizes an equal obligation to carry them out; and (ii) one does not recognize that they confer just a single benefit. This would become impossible if they are inferred, because in the case of the Eighth-Day rite and the like that are not connected to different times, when one follows them, they do not produce different benefits. For the benefit should be assumed in a manner that is not in conflict with their known connections to such things as the time. And that is not possible in the performance of diverse rites, for it is not possible to perform diverse rites at a single time. Further, when they are inferred, there is no special attribute created by the subsidiary element of time, such as forenoon, unlike the case when they are given in textual form. A rite given in textual form, moreover, in order to make people carry it out, formulates a sin for its nonperformance.

7.3 MEDHATITHI (SECOND HALF OF THE NINTH CENTURY C.E.)

Duncan Derrett (1967: 19), perhaps the most prominent modern scholar of the Indian legal tradition, calls Medhatithi "probably the greatest jurist of his science: a substantial distinction. Of the hundreds of jurists whose words are available to us none has laboured in quite the same manner as Medhtithi, and many of his qualities are unparalleled." This praise is well deserved. As we see in these extracts from his great commentary on Manu, he is forthright in his views regarding the nature and the epistemology of dharma. The dharma that he, as a jurist, had to explain and, perhaps, to adjudicate is not one or uniform, nor is it derivable solely from the Veda. The multiplicity of dharma and the sources of dharma, insofar as it is law, that were articulated by Apastamba, Patanjali, and Kautilya many centuries prior to Medhatithi finds a champion in him; and he gave it also a theoretical framework.

Although Kane (I: 575) is correct in his assessment that Medhatithi lived in Kashmir, or at least in northwestern India, he was conversant with legal practices in other parts of the subcontinent, as when he refers to the inheritance practices of the south relating to widows (see ch. 12.2: #1). His date cannot be determined with any certainty, but the second half of the ninth century, a few decades after Visvarupa, appears reasonable.

It is likely that Medhatithi authored several texts. He refers to and cites from one of them, *Analysis of Texts of Recollection* (*smtiviveka*). Medieval authors refer to and cite from his works. Of these, only his great commentary on Manu has survived. Yet, at least in the twelfth and thirteenth centuries, Medhatithi's commentary was not only well known and respected but also referred to as "the Commentary" on Manu. Thus, Devanna Bhatta refers to it simply as *bhya*, "commentary," without ascription.[86] It appears that manuscripts of it were already rare in late medieval India. A verse added at the beginning of the surviving manuscripts states that a king named Madana acquired a copy from another region and undertook what he terms *jroddhra,* the restoration of a decayed or damaged work. This restoration was done probably in the second half of the fourteenth century. We still do not have a good critical edition of this important work.

Medhatithi has, at least from a modern perspective, a refreshingly realistic view of how the treatises on dharma of Manu and others were composed. He does not buy the narrative attached to the beginning of Manu's text that calls him the son of the creator, from whom he received the treatise on dharma. In his comments on this narrative, he appears to take it as a pedagogical strategy to make people pay attention to and study the treatise. Medhatithi thinks that Manu was simply an entrepreneurial scholar who assembled a team of experts from various disciplines and Vedic schools, gathered material from them, and composed his work. He even claims that a contemporary person can do the same thing: "Even in contemporary times, when a person endowed with the aforementioned qualities and with those very reasons composes a treatise, he becomes authoritative for future generations just as Manu and the like." For him, therefore, the canonical lists of authoritative texts first listed by Yajnavalkya (1.4–5) and then expanded by later medieval authors (see ch. 8.3: #1) are meaningless.

Medhatithi is equally forthright in the long-standing dispute about how the texts of recollection are related to or based on the Veda. He simply says that there must be a connection, but it is impossible to determine the exact manner in which the two genres of texts are connected.

He acknowledges, moreover, that side by side with the Vedic dharma, there is also a worldly dharma that ordinary people know and that can even be promulgated by a king. He calls such dharma *laukika* (worldly) or *vyvahrika* (conventional) and uses the technical term *vyavasth* (norm) to refer to these kinds of norms and laws prevalent in different regions. Such a law can be taught even by an untouchable Candala. At one point, in discussing the dharma of a king, he says candidly that not all dharmas are based on the Veda, and that much of the dharmas relating to king and governance actually have visible goals and motives (*drtha*), something that would be anathema to scholars of Vedic exegesis.

Finally, he has a realistic view of texts of recollection and their relation to normative practice (*cra*). There really isn't much difference between these two sources of dharma in terms of their nature or authority. The only significant difference is that the normative practices are so diverse that they can never be put into textual format.

1

The term "dharma" is used in the world with reference to the means whereby prosperity[87] is attained, means that are not ordained by worldly epistemic sources such as perception, which are different from the scriptural authority. (Extract from Medh on *MDh* 1.1; p. 2)

2

We see that the term "dharma" is used with reference to what should be done and what should not be done, that is, injunctions and prohibitions that have an unperceived purpose (Introduction, n. 38), as well as with reference to an action falling within their scope. Does the term, however, connote both equally or one of them secondarily? I will not undertake this inquiry here, because I have done so extensively in another book of mine[88] and because it is of little use here. In both scenarios, nevertheless, in statements such as, "One should perform the Eighth-Day rite" and "One should not eat red garlic,"[89] we recognize the obligatory nature of performance relating to the Eighth-Day rite and the prohibition relating to the eating of red garlic. Thus, with respect to the result, there is no difference whether dharma is the rite called "Eighth-Day" or the obligatory nature of performance relating to it. And once instruction has been given as to what constitutes dharma, it becomes established by implication that what is contrary to it is adharma. It emerges, therefore, that what is being stated is as follows: the scope of the treatise extends to both dharma and adharma. Of these, carrying out the Eighth-Day rite is dharma, and the avoidance of such acts as killing a Brahman is dharma; not carrying out the Eighth-Day rite is adharma, and carrying out the killing of a Brahman is adharma. That is the distinction between dharma and adharma. (Medh on *MDh* 1.2; p. 4)

3

> The timeless dharmas of regions, dharmas of castes, dharmas of families, and the dharmas of heretical sects and guilds—Manu has set them forth in this treatise. (*MDh* 1.118)

This reinforces that same portrayal of the treatise as comprehensive. The dharmas of regions are those followed in a restricted region and not across the entire earth. The dharmas of castes are those that relate to castes such as Brahmans. The dharmas of families are those instituted within renowned lineages.[90] "Heretical sects" refers to the practice of prohibited observances; within them, the reference is to the dharmas that derive from texts of recollection of outsiders,[91] mentioned in the statement: "Ascetics of heretical sects, individuals engaging in improper activities" (*MDh* 4.30). A guild is a company of traders, artisans, performers, and the like. All these dharmas has Lord Manu set forth in this treatise.

4

> The root of dharma is the entire Veda; and the recollection and conduct of those who know the Veda; and the practice of good people; and contentment of the self. (*MDh* 2.6)

[Opponent's Objection]

How is this verse germane to the treatise, inasmuch as in this work dharma has been announced as the topic to be discussed, and dharma is characterized by injunctions and prohibitions? Here the fact that the Veda is the root of dharma should not be the subject of an injunction such as, "One should recognize the Veda as the root of dharma. One should resort to the Veda as the epistemic source of dharma," because that is established even without this instruction. For the instructions of Manu and the like are not needed in order to learn that the Veda is the root of dharma. On the contrary, the authoritativeness of the Veda is established as self-evident in the same way as perception, because (i) it is free of any suspicion of presenting falsehoods even by flaws derived from its connection to persons, given that it produces knowledge of an object that is not subject to

invalidation and it is not authored by any person;[92] *and (ii) verbal testimony, by itself, is not subject to vitiation. Now, some may object:*

After reiterating the authoritativeness of the Veda that is established through reasoning, this verse communicates verbally the fact that texts of recollection, such as that of Manu, have the Veda as their root.

This is also incorrect. Even in this case—given that (i) a recollection necessarily presupposes a prior cognition; (ii) error, deception, and the like are excluded by reasons such as the fact that these texts have been accepted by great men; (iii) it is impossible to perceive acts that transcend sensory perception; and (iv) for a person his own experience is indisputably established—all we are left with is the conclusion that the recollection of acts enjoined in the Veda must be based on the Veda itself. For it is impossible that people who know the Veda would require a recollection relating to an act that they are obliged to perform. And, given that the Veda itself is the root, there is no room to assume some other root. Nor is it correct to say this:

The statement "the recollection and conduct of those who know the Veda" is also a reiteration in order to point out that texts of recollection of outsiders[93] lack authority.

The reason is that their lack of authority is established through reasoning alone. For there is no possibility that Buddhists, Bhojakas,[94] *and Jains have any connection to the Veda whereby they would become, by having the Veda as the root, authoritative with regard to matters within their own sphere. This is so also because these people themselves do not claim that, while they do indeed claim that the Veda lacks any authority and they teach things that conflict with perceptible Vedic texts. The impossibility in this case lies in the fact that those texts of recollection forbid the recitation of the Veda. For only if the Buddha and others were reciters of the Veda could the question arise as to whether these texts are rooted in the Veda or not. When, however, their connection to the Veda has been completely discarded, what doubt can there be as to whether their texts are rooted in the Veda? They themselves, furthermore, claim a different root that has come down to us in an uninterrupted succession: "I perceive, O monks, through my divine sight the good and bad courses."*[95] *Likewise, all outsiders without exception, such as the Pacaratrins, Jains, Anarthavadas,*[96] *and Pasupatas, claim that the authors of their canonical texts are extraordinary men or special deities who perceive directly the subjects presented in those texts. And they do not even acknowledge that their dharma is rooted in the Veda. In those texts, there are actions taught that are contrary to perceptible Vedic texts. Here are some examples: if people such as Samsaramocakas*[97] *state that killing is dharma—such killing is explicitly forbidden in the Veda. Likewise, other traditions hold that bathing at sacred fords is adharma, whereas there is a rule in the Veda: "One should bathe every day. One should visit sacred fords."*[98] *So also some hold that the killing of the animal dedicated to fire and Soma causes sin, which contradicts the Vedic rule regarding the Soma sacrifice. Then there are others who think that all sacrifices and offerings are made for one's own purpose, which is contrary to what we gather from rules about the distinction between deities, namely, that these sacrifices and offerings are made to different deities.*

Now, there are also some who argue:

We see that there are contradictions among perceptible Vedic texts, as in the cases of holding and not holding and of the time for the fire offering as before sunrise or after sunrise.[99] It is, therefore, quite possible that there is some Vedic branch or other, whether extinct or not extinct, that would provide rules supporting acts that are contrary to perceptible Vedic texts. For the branches of the Veda are innumerable; how can they all be perceptible to any one person? Their extinction is also a possibility. So, among them there may well be a Vedic branch in which these practices, such as eating in a bowl made from human bones and remaining naked-skinned, may be taught.

To this we offer the following reply. We do not say that it is impossible for there to be contradictory teachings in the Veda. On the contrary, there is no obstacle to two optional procedures, because they are of equal weight. In the present case, however, a Vedic text has to be

assumed; but there is no room for an assumption that is contrary to a perceptible Vedic text. Further, something cannot be certain merely because it is possible. The rule that contradicts it, however, a rule that is based on a perceptible Vedic text, is certain, and it certainly cannot be annulled by an uncertain rule. And later on, in the context of this same verse, we will discuss extensively the thesis that some Vedic branches have become extinct. Everywhere, furthermore, texts of recollection such as that of Manu are closely connected to perceptible Vedic texts— sometimes to a mantra, sometimes to a deity, and sometimes to rules concerning ritual substances. This is impossible in the case of texts outside the Vedas, and therefore they lack any authority.

In like manner, practices that are being carried out by people who know the Veda as acts that do not have a perceived purpose are authoritative in the same way as texts of recollection, because it is possible for those practices to be rooted in the Veda. Further, practices of people who are not good lack authority because of the possibility of things such as the following: these practices have perceptible reasons, and ignorant people are prone to errors.

The same is true with respect to the contentment of the self.[100]

If, furthermore, the authority of the Veda, texts of recollection, and practice is to be gathered through the teaching of Manu and the like, then how do we gather the authoritativeness of Manu and the like? If the answer is that their authority is also gathered from other teachings, such as, "Manu has proclaimed the dharma contained in recollection,"[101] *then how do we gather the authoritativeness of the latter? Therefore, the judgment that this one is authoritative and this one is not authoritative is to be arrived at through reasoning and not through a teaching. Consequently, this verse is meaningless, as are verses similar to this given later on.*

[Author's Response]

To all this we give the following reply.

Here the authors of aphoristic texts on dharma, in order to educate uneducated people, have embarked on the composition of their works with the goal of having the enjoined acts carried out. Just as these authors, after they had themselves gathered from the Veda the obligation to perform the Eighth-Day rite and the like, presented those rites in textual form in their aphoristic texts for the purpose of instructing others, so also did they describe such things as the authority of the Veda that are established through other epistemic means. There are some seekers of knowledge who are unable to ascertain the truth through reasoning, because they lack the intellectual abilities, such as rational analysis.[102] With respect to such people, instruction is offered even with regard to acts that are established by reasoning, just like the instruction of a friend. In this connection, the very fact that the Veda is the root of dharma, which is established by reasoning, is simply reiterated in this verse: "The root of dharma is the Veda." Once the Veda, after due examination, has been established by reasoning as the root of dharma, one should never entertain any doubt with regard to its authoritativeness. There are in the world, furthermore, people who give instruction with respect to matters that are already established through other epistemological means: "You should not eat before your food has been digested, for sicknesses arise from indigestion." Nor should you claim: "Those who are unable to recognize through reasoning that the Veda is the root of dharma will not comprehend it even through verbal testimony." And here is the reason: we see that there are some people who consider as authoritative without argument the words of those who are well known as trustworthy individuals.

In this manner, therefore, this entire topic has reasoning as its root, not the Veda. In other topics also, such as the text of recollection dealing with legal procedure, wherever reasoning is the root, we will point it out as occasions present themselves. We will explain right here the fact that the Veda is the root of the Eighth-Day rite and the like.

[section p. 58, line 13 until p. 59, line 18 of Jha's edition has been omitted]

This **Veda**[103]—that is, a specific collection of words, without an author, having the appellation "*mantra-brhmaa*,"[104] and divided according to the distinctions of numerous Vedic branches—is **the root of dharma**. "Root" means epistemic source, that is, the cause of knowledge.[105] "Root" means cause only insofar as the Veda and texts of recollection cause dharma to be known, not insofar as they produce dharma or cause its stability, as in the case of a tree.

Now, the term "dharma" has already been explained (see selections #1–2). It consists of what a person must do that, insofar as its intrinsic character is different from what can be gathered through perception and the like, is the means of attaining prosperity.[106] Agriculture and the like, indeed, fall within the scope of what a person must do; but its intrinsic character as the means of attaining prosperity can be gathered through positive and negative methods of deduction. With respect to the kind of process through which activities such as agriculture will produce results such as rice, that too can only be gathered through perception and other such means. That sacrifices and the like are means of attaining prosperity, on the other hand, and the manner in which they do so, such as the rise of an unseen effect and its disjuncture from the result[107]—all this cannot be gathered through perception and other such means. Prosperity, moreover, is (i) the attainment of a desired object such as heaven and a village, an attainment that is expressed in a general way by the term "happiness"; and (ii) the elimination of the attainment of such results as sickness, poverty, unhappiness, and hell, an attainment that is expressed in a general way by the term "sorrow." Others, however, think that prosperity consists of such things as ultimate bliss.

This latter dharma is gathered from the statements of the *brhmaa*s containing the verbal forms such as the optative, and in some cases also from mantras such as: "He sacrifices partridges for spring" (*VS* 24.20). Among these, statements containing the word "desire" teach the performance of something for the sake of that result: "Someone who desires Vedic splendor should offer an oblation of milk rice to the sun" (*TS* 2.3.2), "Someone who desires a village should offer the Sgraha sacrifice to the All-gods" (*TS* 2.3.9). These are not performed by someone who does not desire that result. There are other acts that are presented as always obligatory by the use of such words as "all one's life."[108] These are not performed for the sake of a result, because a result is not mentioned in the Vedic text. And one cannot assume a result even though no result is mentioned in the Vedic text, in the same way as in injunctions such as: "One should offer the Vivajit sacrifice" (*B* 10.2.1.16).[109] The reason is that through terms such as "all one's life," one understands these as acts whose performance is obligatory even without any results. By not performing them, one incurs the sin of transgressing the content of a scriptural text. In these contexts, one performs these acts in order to avoid such a sin. The same course is true also with regard to prohibitions: "One should not kill a Brahman" and "One should not drink liquor."[110] For one avoids what is prohibited not for the sake of a result but in order to avoid a sin.

[section p. 60, line 8 until p. 62, line 18 of Jha's edition has been omitted]

"The recollection and conduct of those who know the Veda."

A cognition whose content is something that has been directly apprehended is called recollection….[111] The recollection of those who know the meaning of the Veda in the form of "One should do this. One should not do this" is also an authoritative epistemic source.

Surely, there are those who claim that recollection is not an independent epistemic source, for it simply reiterates the object to be known that is already known through another epistemic source. They say that it does not demarcate an act beyond that.

That is true. For those who have the recollection, the epistemic source with respect to what they recalled is verbal authority and the like, which they had at the very outset, not their own recollection. For us, however, it is only the recollection of Manu and the like that constitutes the epistemic source;

without that recollection, we will not recognize the obligation to perform the Eighth-Day rite and the like from any other source. And we ascertain that such were the recollections of Manu and the like from the statements authored by them, which have come down to us in an unbroken line of recollection. Further, because of that recollection, we come to the conclusion that Manu and others apprehended this act through some epistemic source. This conclusion is based on the fact that they had this recollection, for a recollection of something that has not been apprehended is not possible.

Is it not possible that they composed the books through a process of imagination without having apprehended anything at all through any epistemic source, as some poets present a narrative after inventing a story line?

To this we reply: that would be so if these books contained no instruction with regard to the obligatory nature of activities, for instruction with regard to the obligatory nature of activities is aimed at their performance. And no rational actor would think of performing something someone has invented through his own fancy. If you argue:

Its performance may take place also by mistake.

One person may indeed make such a mistake. To say that the entire world has made the same mistake, and that it has lasted from the beginning of creation—that is a most bizarre conjecture. And, given the distinct possibility that the works of Manu and others are rooted in the Veda, there is no room for assuming a mistake and the like.

For the same reason, we do not accept the view that Manu and others came to see the dharmas through direct perception. Perception is the cognition that arises from direct contact of the objects with the sense organs. And it is not possible for dharma to come into direct contact with sense organs, because the essential nature of dharma consists of the obligation to perform an act. What should be performed, however, is something that has not yet come into being, and direct contact happens only with respect to entities that have already come into being. It is true that means such as inference do make known things that are nonexistent at the present moment; for when ants travel carrying their eggs, one infers that rains are on their way.[112] Nevertheless, by those means one cannot gather the obligation to perform an act. Therefore, the assumption that there must be a cause comparable to the recollection of what should be performed points only to the Veda. Further, this Veda that is inferred must have been directly perceived by Manu and others.

(i) Today that Vedic branch in which these dharmas presented in texts of recollection were found must be extinct. In this context, the question is whether this was a single branch or several branches, and among them, some dharmas such as the Eighth-Day rite are found in some branches—so this kind of inference proceeds.

(ii) Alternatively, these Vedic branches are recited even today. Those dharmas, however, are scattered—in some branch or other there may be the originative rules of rites such as the Eighth-Day; in some other branch the material for the rites may be given; in another the divinities; in yet another the mantras. What Manu and others did was to bring together the individual details of the dharmas that were scattered in this manner so as to make them easy to understand.

(iii) Alternatively, these dharmas may originate simply from indicators found in mantras and explanatory statements.

(iv) Alternatively, these acts that we are obliged to perform have no beginning and are as eternal as the Veda, having come down to us in an unbroken tradition of transmission.

(v) Or perhaps Manu and others also, just as people like us, performed actions based on the understanding of others and founded on Vedic texts that can always only be inferred.

These and numerous other alternatives have been examined by the author of the *Vivaraa.*[113]

The following, however, is the extent of our judgment. The performance of these things is based on the Veda, because we see the intrinsic connection of acts enjoined by texts of recollection with

what they have learned; and (iii) those who are totally devoted to practicing what they have learned. It is the recollection of individuals possessing all three qualifications that is authoritative. It is stated in texts of recollection that all these qualifications were present in persons such as Manu. Otherwise there is no possibility that the treatises composed by them would have found acceptance with the cultured elite.

If that were so, it should have been stated clearly: "The statements of persons such as Manu are the root of dharma." What purpose does this kind of characterization serve?

That is true. There may be some people who in some way do not agree that these treatises are authoritative. It is with respect to them that this presentation of reasons for their authoritativeness is given, reasons that are well known in the science of logic.[138] Even in contemporary times, when these reasons are present in an individual, his statements are also to be accepted, just as those of Manu and the like. This happens in the case of learned men who give instructions pertaining to expiations and the like. Only such individuals become authoritative as a legal assembly: "When even a single Brahman who knows the Veda determines something as dharma, it should be recognized as the highest dharma, and not something uttered by myriads of ignorant men" (*MDh* 12.113). For this very reason, the exhaustive list of authors of the texts of recollection: "Manu, Visnu, Yama, Angiras,…," is without any basis.[139] So, for instance, the cultured elite consider Paithinasi, Baudhayana, Pracetas, and the like as having the same status, and these are not contained within that exhaustive list.[140] In all cases, when the cultured elite unanimously recall or state that a particular individual is endowed with the aforementioned qualities, and that he has composed this treatise, then that individual's statements, even though they are of human origin, should be considered an authoritative epistemic source with respect to dharma. That is the meaning of the phrase: "The recollection and conduct of those who know the Veda."

Even in contemporary times, when a person endowed with the aforementioned qualities and for those very reasons composes a treatise, he becomes authoritative for future generations just as Manu and the like. In the case of contemporaries, however, the same sources of that person's knowledge would be available to others as well, and thus they would not derive their knowledge from his statements. For knowledgeable people will not accept the statement of a contemporary as authoritative unless he shows the Vedic root of his knowledge. When that root has been shown, however, and his treatise has been accepted as authoritative, after the lapse of time, if in some way it is considered to have a Vedic root equal to texts presenting the Eighth-Day rite, then it is proper to infer that such treatises have a Vedic root, given that otherwise it would have been impossible for them to have been accepted by the cultured elite.

"And the practice of good people"—

The word "and" connects this to the phrase "of those who know the Veda." These two phrases indicate that the reference is to the cultured elite. The practice of the cultured elite is also a root with respect to dharma. The term "practice" refers to ordinary behavior, to performance. When with respect to something there is no statement of the scriptures or texts of recollection, while the cultured elite perform it in the belief that it is dharma, that also should be accepted as truly based on the Veda, just as acts prescribed in texts of recollection. Here are some examples: tying a bracelet at marriage and similar customs that are carried out as auspicious rites; worship of renowned trees, spirits, crossroads, and the like carried out differently in different regions by a virgin girl on the day she is going to get married; the different number of hair locks maintained in different regions; the ministration to guests and the like, as also to elders and the like, consisting of amiable and pleasing words, salutation, rising up to greet, and so forth. Likewise, some recite the Pni hymn holding grass in their hands as they present fodder to the sacrificial horse.[141] These sorts of things constitute "practice."

Vedic injunctions, and because people who perform them do so after seeing that connection. This intrinsic connection, moreover, was already demonstrated—in one place the Vedic rule is subsidiary and the rule in the text of recollection is primary; in another place the opposite is true; in one place there is an originative rule; in one place, a rule on eligibility; and in another place, an explanatory statement. In this manner, all acts enjoined by texts of recollection have an intrinsic connection to Vedic injunctions. We have provided a comprehensive judgment on this in the *Smtiviveka*:[114]

> The acts prescribed by the texts of recollection and by the Veda are intrinsically connected to each other. Therefore, the two can never be split apart in terms of either the actors or the acts themselves.
>
> If the very same people who perform what is prescribed in perceptible Vedic texts also perform what is prescribed in texts of recollection, that establishes the fact that they are rooted in the Veda.
>
> The chief reason for accepting the authoritativeness of something is its acceptance by those who know the Veda. Therefore, it has been said that the inference of Vedic texts is based on the fact that the actors are the same.[115]

There is no authority, however, to specify the particulars, nor is it useful.[116]

(i) It[117] is entirely possible that some Vedic branches have become extinct, for we see even today Vedic branches with very few reciters. Some hold that the authors of the texts of recollection composed their texts by extracting from these branches that were probably in imminent danger of extinction just the injunctions, stripped of any explanatory statements. Apastamba says, "Injunctions are given in the *brhmaa*s. Of these, the lost readings are inferred from usage."[118]

In the above scenario, however, we must make numerous unprecedented assumptions, such as these: there was an improbable disregard of the very Vedic branch that was most useful and in which all the dharmas given both in texts of recollection and in texts on the domestic ritual pertaining to all the social classes and orders of life were set forth, and all its reciters became extinct.

(ii) It is credible, however, that individuals who are well versed and have arrived at definite conclusions through reasoning should excerpt the practical rules from the scattered dharmas that are cluttered with explanatory statements and that are difficult to differentiate, between which of them pertain to the acts themselves and which to their performers.[119]

According to this thesis, however, given that both a Vedic text and a text of recollection are based on perceptible Vedic texts, when the two contradict each other there is an option between the two, and the text of recollection is not invalidated. But this is unacceptable to learned people. Authors of the texts of recollection, moreover, have acknowledged that such a text of recollection would be invalidated and that texts of recollection are based on Vedic texts that are inferred. Gautama too has made the same point: "There is, however, only a single order of life, teachers maintain, because the householder's state is enjoined in perceptible Vedic texts" (*GDh* 3.36). For if those Vedic branches were perceptible to Manu and the like, how could this statement be appropriate: "because the householder's state is enjoined in perceptible Vedic texts"? Aren't all the orders of life enjoined in perceptible Vedic texts? It is really Gautama's own view that he has presented under the guise of its being the view of the teachers, because after introducing the subject with the statement beginning, "For him, some assert, there is an option among the orders of life" (*GDh* 3.1), he sums it up with the above statement.

(iii) The fact that mantras and explanatory statements are authoritative epistemic sources is also consistent. Although it is true that the aim of explanatory statements is the illustration and eulogy of injunctions and that they do not have an injunctive function with respect to their subject matter,

nevertheless, it is impossible to take some explanatory statements as aimed solely at something other than themselves unless they make us aware of injunctions with respect to their own subject matter. Take, for example, statements such as "One who steals gold; one who drinks liquor" (*ChUp* 5.10.9). It is impossible for them to be a subsidiary portion of the injunction pertaining to the five fires unless they make us aware of the prohibition of acts such as stealing gold. A person who studies the science of the five fires does not fall even if he commits acts such as stealing gold or associates with people who commit such acts; otherwise, he falls—this interpretation is consistent.

Now, who has contrived this rule of interpretation: "Mentioning an injunction by name is an imparting of that injunction and not an explanatory statement"? In this very text, "these four fall" (ChUp *5.10.9), we find a finite verb. If you object that verbal endings such as the injunctive are missing, even in the context of the Night sacrifices the statement "They become well established," the injunctive ending is entirely missing.*[120] *If you respond, "In that case we determine it to be an injunction by assuming a verbal ending such as the injunctive, given that there is an expectation of eligibility for the rite and the presence of a syntactic unity of the passage"*[121]*—then the same can be true in the previous case! There are, furthermore, numerous injunctions relating to ritual materials and deities that can only be ascertained by means of explanatory statements. In such cases, when particular explanatory statements are subsidiary portions of a particular injunction—given that this very injunction requires ritual materials and deities—with reference merely to the communication of the ritual particulars, it is not improper that the knowledge of these particulars integral to the ritual performance is dependent on these explanatory statements. In the case at hand,*[122] *however, because one would have to seek a different injunction unconnected to the explanatory statement, there will be a syntactical split, and the result is that this explanatory statement cannot be a subsidiary portion of the original statement.*[123] *And if that connection is absent, then there cannot be any notion of a prohibition based on that connection. For this reason, moreover, they say that the situation here is quite dissimilar to the statements: "One puts in pebbles that have been anointed. Ghee is energy" (* TB *3.12.5.12).*[124]

That is untrue. Even though an explanatory statement may have a different meaning, yet the objection relating to syntactic split does not arise when we arrive at this understanding, because it is based on the fact that the explanatory statement and the injunction constitute a single syntactic unit.

Mantras, because of their very linguistic form, are recognized as disclosing their ritual application, and, because that application cannot be established by any other means, they lead us to assume the object of this disclosure so as to maintain that disclosing character of theirs. If the originative injunction and the injunction on eligibility were nonexistent, the disclosure of the Eighth-Day rite would be impossible. Therefore, mantras reveal the originative injunction, eligibility, application, and procedure.[125] In this manner, it is accepted that even injunctions are portrayed by mantras, like the injunction relating to the divinity in the rite of the sprinkled ghee offering.[126] For it is accepted that dharma has four feet.[127] There are Vedic prescriptions with regard to only a very small portion of it. The source that reveals all the other portions must certainly be of a similar character, given that they are perceived through a connection to an injunction. So, in one way or another they are necessarily connected to the Veda.

Manu gathered around him a large number of students who studied many different Vedic branches, as well as other Vedic scholars, and having learned from them the various Vedic branches, he composed his treatise. By presenting those Vedic branches as its root, he has established the authoritative character of his treatise. In this manner, others became zealous in performing activities relying upon that treatise and did not strive to discover those roots. This is also our inference.

Consequently, even though the Vedic basis is equally present in both, when the two are in conflict it is proper that one is invalidated. When a performance is established by means of a perceptible Vedic text, there is no desire at all to look for another Vedic text. For example, in the case of the Smidhen verses, between sets of seventeen and fifteen verses, the original being

contained by the set of fifteen, there is no desire to look for the set of seventeen even though it is given in a perceptible Vedic text.[128] For what is directly expressed by the words is immediately present, and it invalidates a conception that is to be gathered through an anticipation created by a point directly expressed, a conception that is weaker because it is remote. Yet this does not require the latter to be without authority. The situation here should be considered similar to the following. Supplementary ritual elements of the ritual archetype, although the general rule makes them valid for its ectypes, are rendered invalid when they are in conflict with the elements specific to the ectype.

(iv) The view that there is an unbroken line of tradition entails the logical fault of a continuous line.[129] For here not a single person becomes invested with authority.

(v) The view according to which Vedic texts were always inferred is also not too different from the view regarding a continuous line. We are engaged in investigating the root of the recollection of Manu and the like. If they also had to infer this Veda just like us, then they would not be people who had those recollections. It is, furthermore, impossible to infer an entity that has never been directly perceived by anyone, because in this case there is no possibility of a positive concomitance.[130] In motion and the like, one does, indeed, detect a connection through an inference based on a generally observed principle.[131] Or even if motion and the like are to be ascertained through circumstantial inference, yet in the current case the impossibility of an ascertainment by some other means does not obtain.[132]

Therefore, Manu and others are undoubtedly linked to the Veda with respect to this issue.[133] It is, however, impossible to determine the specific nature of that link. When people who know the Veda have the doggedly resolute conviction that something must be carried out, then it is appropriate to assume that it is, indeed, rooted in the Veda and not rooted in something else, such as an error. In this way, an assumption comes to be made with respect to the cause that is in keeping with that conviction. With respect to that, the ability to make an assumption with respect to extinct or scattered Vedic texts and with respect to mantras and explanatory statements is appropriate, because of the existence of causes consisting of perceptible Vedic texts. In some instances we even find a perceptible Vedic injunction serving as the root: "One should not converse with a menstruating woman" (*TS* 2.5.1.4–5). This injunction is recited at Vedic recitation and at Vedic initiation.

[section from Jha p. 65, line 22 until p. 67, line 5 is omitted]

We, however, give the following explanation.[134] By the term "conduct" is meant concentration. So, for instance, in lists of verbal roots we read: "Conduct with the meaning of concentration."[135] Concentration is a quality of the mind. When the mind is totally engaged in explicating the meaning of the scriptural text by avoiding diversions to other objects, it is called "conduct."

The two elements of this copulative compound, "recollection-conduct," are mutually interdependent.[136] Therefore, what is intended is that the mutually interdependent recollection and conduct are authoritative with respect to dharma, not that they are its creators, like the Veda mentioned earlier. This is what it ends up saying: only the recollection that is accompanied by concentration is authoritative, not simple recollection alone. Therefore, even when individuals know the meaning of the Veda, their recollection when they are not intently focused on the Veda does not constitute the root of dharma, given that, when they are not concentrating on the meaning of the scriptural text, it is possible for them to fall into error and the like.

The word "and" is given here,[137] but it should be understood to come immediately after the words "of those who know the Veda." It has been placed in this location due to metrical exigencies. The word "and" has a conjunctive meaning. In the previous phrase, however, there is nothing that requires conjoining. Therefore, it conjoins the phrase "of good people" found in the third foot of the verse.

Consequently, there are three qualifications referred to here: (i) those who are learned, that is, those who have acquired learning from a teacher; (ii) those who are totally devoted to rehearsing

This sort of practice is also of various kinds depending on the differences in the nature of human beings and on the differences in what is pleasing and displeasing to their minds. Because these practices are without limit with respect to their peculiarities, it is impossible to assemble them in a single book.[142] The same thing that one finds most of the time to be pleasing to a particular individual produces the opposite effect on a different occasion. Similarly, when a householder ministers to a guest, it causes joy to one person: "This man attends to me like a servant!" while another person reacts differently and becomes put off by that very ministration: "With this man always around, I can't find a moment even to sit down and relax." With respect to these things, it is not possible to infer a Vedic text either generally or specifically. In the case of the Eighth-Day rite and the like, however, their entire procedure, which is constant and uniform, is given in the texts of recollection. This is the difference between texts of recollection and practice.

"And what brings contentment to the self."

This is syntactically connected with the phrase "the root of dharma," and with the phrases "of those who know the Veda" and "of good people." And, some argue, it has the Veda as its root only because of the authoritativeness of these people. For when the minds of these kinds of people become pleased with respect to something that has to be carried out, and there is no hatred involved, then it is dharma.

Surely, would it not follow that when someone's mind is pleased with respect to something that is totally prohibited, it would become dharma? Further, someone may have misgivings with respect to something that is enjoined, and that would not be dharma.

That is so. In the case of these kinds of distinguished and wise individuals, the immense power of their mental pleasure is such that it even converts an adharma into dharma and a dharma into adharma—but not in the case of people tainted by flaws such as love and hatred. As every substance that enters the salt mine of Rum[143] becomes transformed into salt, so a man who knows the Veda makes everything totally pure by means of his mental pleasure that has arisen spontaneously. Therefore, with regard to the oain vessel, even though holding it is prohibited, yet doing so in accordance with the rule does not create a fault.[144] In the present case, however, there is no room for an option as in the case of holding, for the prohibitions are limited in their scope to areas that are different from what gives contentment to the self.

Alternatively, these individuals would never find contentment in adharma, just as a mongoose chews only a plant that destroys poison, and no other. Therefore it is said: "Whichever plant a mongoose chews, it is a plant that destroys poison."[145]

On this, furthermore, distinguished people say the following. With respect to actions that are optional, a person should adopt the course that would sooth his mind. Manu, moreover, will state in the sections on the purification of objects[146] and on penances: "If someone's mind is not at ease with respect to a particular act he has committed, he should practice ascetic toil for it until his mind becomes content" (*MDh* 11.234).

Alternatively, Manu here states the lack of eligibility of a man without faith, by reason of the fact that he is a nonbeliever. For the self of a nonbeliever, even while he performs a Vedic rite, does not find contentment. Even though he may perform a rite, therefore, it produces no result at all.

Alternatively, the passage teaches the serenity of mind that pertains to all ritual acts. At the time of their performance, he should abandon hatred, delusion, sorrow, and the like, and keep his mind joyful. And therefore, as in the case of "conduct," the passage points out that "contentment of the self" is a root of dharma insofar as it is a necessary supplement of all rites.

A man with faith should accept fine learning even from a low-caste man; the farthest dharma even from a man of the lowest caste; and a splendid woman even from a bad family. (*MDh* 2 .238)

[passage is from p. 194, lines 16–20 of Jha's edition]

"A man of the lowest caste" is a Candala. "Farthest dharma" means the worldly dharma that is farthest, namely, different[147] with respect to the one given in the Veda and the texts of recollection. The term "dharma" is employed also with reference to a norm. So, if even a Candala were to say, "This is the dharma in this place"—"Do not stay too long in this region"; "Do not bathe in this body of water"; "Here this is the dharma among the villagers"; or "This is the statute established by the king"—one should not think: "I must follow the words of my teacher. Curse on this wretched Candala who dares to instruct me!"

6

I will explain the dharmas of a king—how a king should conduct himself, how he came into being, and how he can attain the highest success. (*MDh* 7.1)

We have already explained that the term "dharma" denotes what should be done.[148] What should be done by a king is now explained—this is the enunciation of the subject matter.

What should be done consists of things that have a perceived purpose, such as the sixfold strategy,[149] and things that have an unperceived purpose, such as the daily fire sacrifice. Of these, in this section for the most part those that have a perceived purpose are explained; and it is only with respect to these that the expression "dharma of a king" is commonly employed….

For the dharmas explained here have their roots in various epistemic sources; not all of them have the Veda as their root. Even though they may have their roots in other epistemic sources, moreover, the ones explained here are only those that are not in conflict with the treatises on dharma. Accordingly, Katyayana says: "Discarding what is stated in the *arthastra*, he should follow what is stated in *dharmastra*"[150] (*KtSm* 20).

7

Therefore, when the king issues a dharma for those he favors, as also an unfavorable one for those he does not favor, one should not contravene that dharma. (*MDh* 7.13)

Because the king is made from the energies of them all (*MDh* 7.11), "therefore," i.e., for that reason, "for those he favors," i.e., for his favorites such as his counselors and chaplain, in the course of business he "issues," i.e., categorically establishes, "a dharma," i.e., a norm pertaining to duties that is not in conflict with scriptural texts and normative practice; "one should not contravene it," i.e., this kind of king's command should not be transgressed—"Today in the city everyone should observe the festival"; "A wedding is taking place in the counselor's house, and everyone should assemble there." So also: "Today livestock should not be slaughtered by butchers,[151] and birds should not be captured"; "Wealthy people should entertain the dancing girls for this many days." Likewise, also with regard to "those he does not favor"— "No one should associate with this man"; "This man should not be allowed to enter anyone's house."

When the king here promulgates this kind of dharma by the beating of drums and the like, it should not be transgressed. The king, however, does not have power with respect to determining the

dharma relating to the daily fire sacrifice and the like for people belonging to various social classes and orders of life, because (i) that would result in a conflict with various texts of recollection; and (ii) this statement is meaningful with reference to the above area of application that does not involve such a conflict.

CHAPTER EIGHT

Medieval Commentators and Systematizers

With the dawn of the second millennium, we enter a new era in the long history of legal literature in India. As already noted, and as we will see from the samples presented in this chapter and in the companion chapter (13) in part II of this study, the interests and focus of the authors in this period were quite different from those of the authors in the second half of the first millennium. In addition to the traditional commentary, furthermore, a new genre of composition was introduced during this period. It was called *dharmanibandha* or simply *nibandha*, legal digest. Texts of this genre were not tied to any particular root text but presented the various areas of dharma in a systematic way, citing extensive extracts from numerous authoritative texts of recollection. They thus became anthologies, probably used by jurists or as instructional manuals for students.

The authors of this period were not particularly interested in the epistemological issues of primary concern to their predecessors. If we compare the commentaries on *MDh* 2.6 of three representative authors of this period, given in section #1, with that of Medhatithi, given in chapter 7, there is a stark difference. These newer commentaries are skimpy and merely explain the grammar and syntax of the verse.

Even as prominent a scholar as Vijnanesvara, in his commentary on *YDh* 1.7, shows little inclination to deal seriously with the epistemological issues raised by this verse. A comparison with his predecessor, Visvarupa (ch. 7.2), bears this out. Only Apararka appears willing to take the time to comment, but even he simply wants to eliminate the authority of sacred texts of certain sectarian groups of his time. Also, the Buddhists have simply disappeared from the discussions. The issue of how one keeps spurious or non-Vedic texts from being regarded as texts of recollection (*smti*) was now reduced to excluding entire texts rather than individual provisions, a process already started by Kumarila.[1] This view may have given authors the impetus to present normative lists of authoritative texts of recollection, thus creating a canon, as seen below in section 3.1. As we will see in chapter 13, the topic that interested these authors most and on which they wrote elaborate comments was legal procedure, that is, the actual conduct of a case within a court of law.

A significant aspect of the reflections on the epistemology of dharma during this period is the expansion of the category of texts of recollection (*smti*) to include other kinds of religious texts, especially the Puranas. In the early literature, there is no mention of Puranas being included in this broad class of literature. Manu (2.10), as we have seen, explicitly equates it with treatises on dharma. Even though Yajnavalkya includes Purana within the fourteen "repositories of knowledge" (*vidysthna*), he does not count Puranas as texts of recollection. An occasional reference, most often in the singular, is made by Visvarupa and Medhatithi,[2] but they never cite Puranas as authoritative sources of dharma. That to do so was controversial is demonstrated by the declaration at the beginning of Yadava Prakasa's *Yatidharmasamuccaya.* Yadava was the teacher of the great Vaishnava theologian Ramanuja and can be dated to the second half of the eleventh century. After listing the major authors of treatises on dharma, Yadava declares: "The dharma that I present here

has been gathered solely from those sections of their books devoted to the topic of renunciation and not from other sections of those books or from the epics (*itihsa*) and the Puranas."[3] At least in Yadava's eyes, not using Puranas and drawing material exclusively from treatises on dharma enhanced the authority of his composition.

All this changed within a century or so. Puranas figure prominently in the literature of the twelfth century: Vijnanesvara, Aparарка, and the voluminous legal digest *Ktyakalpataru* of Laksmidhara. These texts cite the Puranas frequently, especially when they are dealing with topics ignored by early treatises on dharma, such as temple worship, installation of images, and pilgrimage. Apararka (see section 2.2) makes a distinction between a higher form of dharma and a lower, depending on their sources: "Therefore, the highest dharma is what is learned from the Veda. Texts of recollection, however, state that what is given in the Puranas and the like is inferior." Nandana, the commentator of Manu (see section 1.2), boldly asserts that "Recollection (*smti*) consists of treatises on dharma, epics, and Puranas." The prominent jurist of the thirteenth century Devanna Bhatta (see section 3) openly states: "In the same way it is established that the Puranas also are both authoritative and useful."

8.1 COMMENTATORS OF MANU

1. Govindaraja (Eleventh–Twelfth Century C.E.)

Govindaraja was probably the oldest commentator of Manu after Medhatithi. Given that he is cited or referred to in works belonging to the twelfth century, such as Laksmidhara's *Ktyakalpataru* and Jimutavahana's *Dyabhga,* he probably lived in the eleventh or early twelfth century. One other work of his is known, a legal digest called *Smtimañjar.* The area of Govindaraja's activities was probably north India somewhere in the Gangetic plain.

Now, in order to give an exhaustive listing of the epistemic sources of dharma, he states:

> The root of dharma is the entire Veda; and the recollection and conduct of those who know the Veda; and the practice of good people; and contentment of the self. (*MDh* 2.6)

"Veda" is defined as *c, Yajus*, and *Sma*. "Entire" means total, because that term is used also with reference to explanatory statements and so forth insofar as they form single syntactic units with injunctions.[4] "The root," that is, the epistemic source, "of dharma," because there is no suspicion that it would contain wrong knowledge and because it is inherently authoritative. This is established by reasoning.[5] This is repeated here so as to teach that texts of recollection and so forth are authoritative insofar as they are rooted in the Veda. Likewise, written scientific treatises of Manu and the like constitute the recollection of "those who know the Veda" that something should be done or should not be done; "and conduct" where love and hatred have been abandoned; "and the practice," consisting of practices such as tying a bracelet at occasions such as a marriage; "of good people," that is, of virtuous people; "and contentment of the self," consisting of the total mental satisfaction while performing an act that has an unperceived purpose and pertaining to acts that are optional—these are also epistemic sources with regard to dharma, because all these are rooted in the Veda.

2. Nandana

Little is known about this author, and only one of his works, his commentary *Nandin* on Manu, is extant.[6] His dates are unknown, but my guess is that he must be older than many of the other commentators on Manu. I base this on the fact that he seems much more familiar with the vocabulary of political science than any of the others, including Medhatithi. For example, he and Bharuci are the only commentators who understood the meaning of the technical term *pravsayet* (Manu 8.123) as judicial execution. In my critical edition and translation of Manu (Olivelle 2005), I have found Nandana's interpretations to be quite often correct. I also assume that Nandana was a native of the south, where the tradition of political science was better cultivated than in other parts of India.

Next, he points out the epistemic sources of dharma:

> The root of dharma is the entire Veda; and the recollection and conduct of those who know it; and the practice of good people; and contentment of the self. (*MDh* 2.6)

"Veda" is used in the singular with reference to a class.[7] "The root of dharma" means the epistemic source of dharma. The term "entire" is used because not just the statements containing injunctions constitute the epistemic source of dharma, but also mantras and explanatory statements. "Those who know it" means those who know the meaning of the Veda. "Recollection" consists of treatises on dharma, epics, and Puranas. "Conduct" also, being the root of dharma, is a reason for an assumption.[8] Conduct consists of the exemplary qualities of the self.[9] This has been stated in the *Mahbhrata*: "A man should perform that act in such a way that he will be praised in a public assembly. You have been given this brief summary of conduct, O you who bring joy to the Kurus" (*MBh* 12.124.66). An example of this is Yudhisthira, who, disregarding his uterine brothers, requested from Dharma in the guise of a demon that Nakula should live.[10] The practice of those who know it is also a root of dharma. "Practice" has already been explained. "Of good people" means of those who are the most virtuous; "contentment of the self" means the gratification of the mind. That is also a root of dharma. The meaning is this. Among those acts with regard to which there is a doubt as to whether they are dharma, because they are not included within any epistemic source, when an act gratifies the mind of good people as they take it to be dharma, that act is dharma.

3. Kulluka (Fourteenth Century C.E.)

Kulluka is the best-known commentator of Manu in modern scholarship, due primarily to the historical accident that many of the early editions of Manu were printed along with his commentary. Kane (I: 756) calls his *Manvarthamuktval* "the most famous of all commentaries on Manu." This praise is largely undeserved, because a close comparison of Kulluka's work with that of Govindaraja, whom he has the temerity to criticize frequently, shows that Kulluka has plagiarized wholesale Govindaraja's work. Indeed, a brief look at their commentaries on Manu 2.6, reproduced here, shows the dependence, often verbatim, of Kulluka on Govindaraja.

Now he states the epistemic sources of dharma:

> The root of dharma is the entire Veda; and the recollection and conduct of those who know the Veda; and the practice of good people; and contentment of the self. (*MDh* 2.6)

“Veda” is defined as *c, Yajus, Sma,* and *Atharva*. All that, consisting of injunctions, explanatory statements, and mantras, is, with regard to dharma, “the root,” that is, the epistemic source, because explanatory statements also, insofar as they form a single syntactic unit with injunctions, are authoritative with regard to dharma as laudatory statements. This is stated by Jaimini: “Because they form a syntactic unit with an injunction, however, they function as laudatory of injunctions” (*Mms Stra* 1.2.7). Mantras and explanatory statements also, insofar as they form syntactic units with injunctions, are authoritative with regard to dharma; and they remind us of what must be carried out at the time of performance.

The authority of the Veda with regard to dharma, an authority consisting of instrumentality with regard to perceiving what is true, is established by reasoning. It is reiterated in order to teach the authoritativeness of texts of recollection and so forth, only insofar as they are rooted in the Veda.[11]

The recollection of those who know the Veda, such as Manu, moreover, is authoritative with regard to dharma. Because the attribute “of those who know the Veda” is mentioned, the authoritativeness of texts of recollection and so forth is acknowledged only insofar as they are rooted in the Veda.

“Conduct” consists of such things as loyalty to Brahmans. This has been stated by Harita: “Loyalty to Brahmans, devotion to gods and ancestors, gentleness, not causing pain to others, not being envious, kindness, not being harsh, friendliness, speaking amiably, gratefulness, providing shelter, compassion, and tranquility— these are the thirteen kinds of conduct.” Govindaraja, on the other hand, states that conduct is the abandonment of love and hatred. “Practice” consists of practices such as using a woolen shawl or a bark garment. “Of good people” means of virtuous people. “And contentment of the self” is also authoritative with regard to dharma when it refers to optional acts. That is stated by Garga: “In optional matters, the contentment of the self is authoritative.”

8.2 COMMENTATORS OF YAJNAVALKYA

1. Vijnanesvara (fl. 1100–1125 C.E.)

Vijnanesvara wrote his commentary *Mitkar,* “with measured syllables,” on Yajnavalkya’s treatise on dharma sometime in the early decades of the twelfth century. It has been acclaimed as the most celebrated commentary on a treatise on dharma, mostly because of his extended treatment of legal procedure. The British colonial admistrators, mistakenly, talked about the “Mitkar school of law” (Rocher 1972) that prevailed over most of peninsular India, especially in matters of inheritance, while the school of Jimutavahana’s *Dyabhga* had authority over Bengal. Vijnanesvara lived during the time of the Calukya king Vikramaditya in the western Deccan.

Vijnanesvara’s treatment of the epistemology of dharma, however, pales in comparison to the learned disquisition of his predecessor Visvarupa; he was probably not very interested in the topic. His comments occupy all of five and a half lines on a printed page. This stands in sharp contrast to his learned commentary on legal procedure (given in chapter 13) and to the commentary on this verse of Yajnavalkya by his near contemporary, Apararka.

> Scripture, text of recollection, practice of good people, what is pleasing to oneself, and desire arising out of right intention—that, texts of recollection say, is the root of dharma. (*YDh* 1.7) [12]

“Scripture” is the Veda. “Text of recollection” is treatise on dharma. Accordingly, Manu states:

"Scripture should be recognized as Veda and texts of recollection as treatise on dharma" (*MDh* 2.10). "Practice of good people"—"of good people" means the cultured elite; "practice" means performance. "What is pleasing to oneself"—that is, with reference to optional acts. So, for example, in rules such as: "in the eighth year from conception or in the eighth year from birth"[13] (*YDh* 1.14), the restriction is totally according to one's wish. A desire born from right intention is one that is not in conflict with authoritative texts, as for example: "I shall not drink water outside the time of meals." These constitute the root, that is, the epistemic source, of dharma. When these are in conflict, each previous one is stronger than each succeeding one.

2. Apararka (First Half of the Twelfth Century C.E.)

Apararka, also known as Aparaditya ("The Western Sun"), was a king in the Silahara dynasty that ruled for several centuries in southwestern India. Although technically a commentary on the text of Yajnavalkya, his work is voluminous, being roughly double the size of Vijnanesvara's *Mitkar,* and is also styled a *nibandha,* that is, a legal digest.

The relationship between these two major commentaries on Yajnavalkya has been a disputed issue among scholars. Kane (I: 720) is certain that Apararka knew the *Mitkar* and is therefore to be dated later than Vijnanesvara. However, even Kane does not put them at a great distance in time from each other; they can be considered near contemporaries.

Apararka clearly articulates the position that the epics and especially the Puranas are genuine epistemic sources of dharma, just like the texts of recollection. He, however, presents the curious distinction between a higher and pure dharma given in the Vedas and texts of recollection and an inferior and mixed dharma found in the Puranas. This idea is articulated in a verse ascribed to Vyasa, pointing to the manufacture of individual verses ascribed to different texts of recollection supporting various and novel ideas. Apararka's argument in favor of the authority of Puranas is helped by Yajnavalkya's (1.3) verse dealing with the fourteen repositories of knowledge (*vidysthna*), including Purana, a verse he interprets as presenting the sources of dharma. His lead is followed by Devanna Bhatta, who places this verse at the very beginning of his discussion of the topic (see ch. 8.3: #2).

The main argument of Apararka, however, which takes about three-quarters of his commentary on *YDh* 1.7, concerns the authority of the various scriptural texts (*gama* s, *sahit*s) of the Saiva and Vaisnava sects of his day. He does not mention Buddhists at all. In rejecting the authority of these sectarian works as epistemic sources of dharma, Apararka makes an interesting distinction between *adyatva* and *anuheyatva.* The first refers to texts that are not reprehensible and whose reading does not cause one to be polluted. The second refers to texts that lay down obligatory rites and activities. Apararka takes sectarian texts as belonging to the first category and not the second. We can assume that it is within the context of this kind of onslaught on the validity of sectarian scriptures that sectarian theologians wrote tracts defending the authority of their respective scriptures. One prominent example that deals directly with this issue is the *gamaprmya* of Yamuna, where the Vaishnava theologian mounts a detailed and spirited defense of the authority of Pancaratra scriptures.[14]

Now he states the epistemic sources of dharma:

> Scripture, text of recollection, practice of good people, what is pleasing to oneself, and desire arising out of right intention—that, texts of recollection say, is the root of dharma. (*YDh* 1.7; see n. 12)

Scripture and the rest, each individually, is "the root of dharma," that is, the cause of the certain

determination of dharma. In the verse "The Vedas coupled with Puranas, logic, hermeneutics, treatises on dharma, and supplements—these are the fourteen sites of the sciences, and of the dharma" (*YDh* 1.3; ch. 5.1: #1), the fact that scripture and texts of recollection are the root of dharma was stated in a general way. Here, on the other hand, the fact that they are the root of dharma is stated after singling them out.[15] The circumstantial inference is that the other repositories of knowledge are helpful in understanding the Veda. Unlike grammar and the like, texts of recollection are not meant to help in the understanding of the Veda; on the contrary, they are meant to help in inferring Vedic texts. Hence, they are mentioned separately. Practice and so forth are given here only as the root of dharma. Hence, there is no tautology.

"Scripture" means Veda. "Text of recollection" is an authoritative treatise that, in terms of dharma, has the Veda as its root. "Practice of good people" means the practice of the cultured elite. "What is pleasing to oneself" means what brings satisfaction to one's mind. The term "oneself" here indicates the mind, and the term "pleasing" indicates satisfaction. Therefore, here the satisfaction of the mind points out the cessation of the desire to carry out an activity. Intention is the mental act: "Being proper—that is, keeping the eye on the object of the treatise—I will accomplish this by means of this."[16] Desire arising out of it refers to the desire to carry out dharma. All this is the root, that is, the cause, of the certain determination of dharma. That is the meaning. The word *dharma* is indicative of its certain determination.

Of these, scripture is the root of the certain determination of the daily fire sacrifice and the like; texts of recollection, of matters such as the dharma of social classes and orders of life; and the practice of good people, of matters such as the *Holk* rite;[17] and mental satisfaction, of an activity that is enjoined as circumscribed by mental satisfaction. For example:

> If someone's mind is not at ease with respect to a particular act he has committed, he should practice ascetic toil for it until his mind is assuaged. (*MDh* 11.234)

With respect to a specific time, it is desire arising out of intention. For example: "Whenever he initiates him with faith, at that very time he should put wood on the fire." Or else: "Whenever there is a longing for an ancestral offering" (*YDh* 1.218).[18] Vyasa states:

> Those who desire the purity of dharma do not want anything other than the Veda. It is the pure source of dharma; others are said to be mixed. (See *DhKo* V: 163)

"Purity" means not being intermingled. "Of dharma" means "of the certain determination of dharma." "Pure" means without faults. "Mixed" means having possible faults.

> Therefore, the highest dharma is what is learned from the Veda. Texts of recollection, however, state that what is given in the Puranas and the like is inferior.
>
> One should diligently carry out the activities that have been formerly laid down in texts of recollection by sages who were most proficient in the Veda, and avoid what they have forbidden.
>
> Whatever dharma those men who knew the true meaning of the Veda have pointed out in their desire to benefit the people, one should not subject that to investigation.
>
> Ignorance may well lurk in a meaning of the Veda that a man has come to know by himself. What doubt could there be among wise men in the case of something that has been determined by seers?

> Whatever there is other than these[19] calling itself "dharma," know that it should be kept very far away. Resorting to it is regarded as folly. (See *DhKo* 5: 163)

"One should not subject that to investigation" means one should not suspect that it is not authoritative. "Other than these"—that is, other than the treatises on dharma and the like; one should reject any other thing having a human author.

[Here begins an excursus on non-Vedic scriptures.][20]

Is it not true, moreover, that works such as the authoritative treatises of the Shaivas, Pasupatas, and Pancaratras are, indeed, not authored by men? And therefore, in adhering to their practices there is only felicity, and never any fault, because they cause final liberation?

That is not so, (i) because this statement of the Svayambhu and the like—

> A person in the two orders of life should first sip water and then perform the Vedic twilight worship. A person in the other order of life, however, whose self is detached and who shuns worldly aims, may either perform the Vedic twilight worship or not, but he must necessarily perform the Shaiva twilight worship.
>
> Shaiva on the inside; Kaula on the outside; but Vedic with respect to worldly practice—taking the essence, he should remain like a coconut fruit.[21]

—insofar as it provides delight to ineligible people, contains the fault of claiming that Vedic rites that have been enjoined do not bear fruit; and (ii) because, with respect to people who are experts in the triple Veda and are totally and wholeheartedly dedicated to the performance of the dharma enjoined by Vedic texts and texts of recollection, performing what is given in the sacred texts of the Shaivas and the like is not proven to be the cause of final liberation. Nor is there any harm in their not performing what is given in the authoritative treatises of Shaivas and the like. For only rites connected with orders of life enjoined by Vedic texts and texts of recollection such as the following are beneficial to them, and nothing else:

> He should offer the fire sacrifice as long as he lives. (*Varr* 1.1.1.86)

> And he should always offer the fire sacrifice at the beginning and end of each day and night. (*MDh* 4.25)

The reason for this is the fact that one incurs sin by transgressing acts enjoined by Vedic texts and texts of recollection. Accordingly, a Vedic text states:

> A man who extinguishes the fire is truly a killer of the hero among gods. (*TS* 1.5.2.5)

So also a text of recollection:

> If a Brahman who has established his sacred fires abandons his fires deliberately, he should perform the lunar penance[22] for one month, for it is equal to killing a hero. (*MDh* 11.41)

One should not, moreover, make the following argument.

By the very fact of nonperformance they stand implicitly reproached, because the following verses, the Dev Pura *and the* Yoga-Yajnavalkya, *state authoritatively that these texts are irreproachable and are not to be investigated through logical arguments:*

> *Those who hate the Shaiva treatises and those who disparage the Vedas stand miserable with their mouths full of molten tin.*[23]
>
> *Samkhya, Yoga, Pancaratra, Vedas, and Pasupata—these are exceedingly authoritative and one should not investigate them through logical arguments.* (*BYogYSm* 12.4)

Simply on the basis of this, one should not argue that there is no fault at all in performing them, for the following reasons. (i) According to the maxim "The authority of a text extends only to what it expressly states,"[24] it is improper to perform too little or too much simply through one's own conjecture. (ii) It is impossible to carry out the activities of all the irreproachable scriptures. (iii) According to passages such as the following, when someone assenting to the Shaiva treatises performs Vedic rites, he will incur evils leading to hell:

> It is extremely loathsome, furthermore, for an initiate to perform the ancestral offering enjoined by the Veda. As such, the Vedic rite of ancestral offering should not be offered on behalf of initiates even by people who are noninitiates; it leads both to hell.

(iv) While in statements such as:

> One's own dharma, though imperfect, is better than another's dharma carried out well. Better to die within one's own dharma than to prosper in another's dharma. (*BhG* 3.35)

texts such as the *Mahbhrata* point out the superiority of one's own practice even though it may be defective, and, given that the performance of all irreproachable scriptures is beset with mutually contradictory activities, one would never arrive at steadfastness of knowledge.

Accordingly, the Shaiva adherents affirm the Lord as distinct, stating: "The Lord is the overseer of primal matter and spirit and is only the efficient cause. Primal matter, spirit, and the Lord are by nature different from each other."

The Samkhya adherents affirm that there is no Lord.

The adherents of Patanjali's Yoga, on the other hand, affirm the Lord, stating: "The Lord is a special spirit who is not the maker of creatures; is untouched by defilements, acts, results, and latent impressions; and is all-knowing because he knows all the authoritative treatises."[25]

The Pancaratrins consider the Lord as having a nondual nature: "Lord Vasudeva is the supreme primal nature, abiding as four selves insofar as he is differentiated as tranquil, manifested, displayed, and indefinable."

The Pasupatas, on the other hand, subscribe only to the doctrine of the Lord as distinct: "The five categories—effect, cause, union, rules, and end of suffering—have been taught by Lord Pasupati for the sake of freeing the soul from its snare."

So, because they are thus inconsistent, and because when everyone accepts the knowledge given in all the scriptures doubt is not removed, it is exceedingly difficult to obtain correct knowledge. If one accepts them as options, moreover, it would result in a state similar to that of a lunatic.

Is it not true that this is the case also with the Veda, because, just as the Shaiva scriptures and the like are authoritative simply because they are irreproachable, so also the Veda is authoritative because in texts of recollection it is said to be irreproachable, and hence there is no distinction between the two?

That is true. According to the text: “Those who hate the Shaiva treatises and those who disparage the Vedas stand miserable with their mouths full of molten tin”[26]; the authoritativeness of the Veda is similar to that of the scriptures of the Shaivas and the like simply because they are irreproachable. In passages such as the following from Manu’s text, however, only the Veda is said to be the highest means of accomplishing one’s goals here and in the hereafter, not the authoritative treatises of the Shaivas and the like:

> The Veda is the eternal eyesight for ancestors, gods, and humans; for Vedic teaching is beyond the power of logic and cognition—that is the settled rule. (*MDh* 12.94)

On the contrary, the words such as the following addressed by Rudra to Agastya in the *Varha Pura* teach that, insofar as such scriptures are meant to bewilder, they are totally deceptive:

> Simply in order to delude those who have abandoned the path of the Veda, formerly I communicated the body of works bearing the name Siddhanta.[27]
>
> Since the domestic animal, not adhering to his nature as a domestic animal, has become a fallen outcaste, so this body of works that delude the whole world is known as “Pasupata.”[28] (*VarP* 70.42–43)

> For it is I who will have bewildered these future people, O Brahman. Men, longing for lust, will compose further treatises in the Kali Age.
>
> The *Nivsa Sahit* is indeed one hundred thousand verses in extent. Only that contains the Pasupata method; from it have arisen the various divisions of Pasupatas.[29]
>
> Whatever originates from this text that is different from the path of the Veda and so forth, that should be considered a vile rite, cruel, and devoid of purity. (*VarP* 71.51–54)

The meaning is that scriptures of the Shaivas and the like are totally deceptive because they are intended to bewilder all the people. And in the same text there is, further, the statement of Krishna addressed to Lord Rudra:

> Here I am quickly creating bewilderment that will bewilder people. You too, O great-armed Rudra, compose treatises that bewilder.
>
> Show them how a little effort can bring long-lasting results. But showing trickery, illusions, and wrongful practices, O Mahesvara, quickly bewilder all the people. (*VarP* 70 .35–37)

For this very reason, moreover, Manu states:

All those different from the Veda that spring up and then flounder—they are false and bear no fruit, because they belong to recent times. (*MDh* 12.96)

And for this very reason, Apastamba has shown that practices prescribed in the authoritative treatises of the Shaiva and the like are not authoritative:

Vedas are the ultimate authority: that is the firm conclusion. In that regard, rites using rice, barley, animals, ghee, milk, and potsherds and involving the participation of the wife that are prescribed in the Vedas must be performed with the loud and soft recitation of mantras. They hold that any practice opposed to those rites is devoid of authority. (*pDh* 2.23.10)

Is it not true, further, that words of the Lord such as the following given in the Varha Pura *show that the Pancaratra is not different from the Veda, because a text of recollection presents the Pancaratra as a substitute for the Veda?*

When Vedic mantras are unavailable, those men who follow the practice enjoined by Pancaratra will attain me.

The Pancaratra is prescribed for Brahmans, Kshatriyas, and Vaishyas; it will not reach within the range of the ears of Shudras. (*VarP* 66.11–12)

True, there is no difference. Nevertheless, there is a difference between their respective areas of reference. Accordingly, the above statement should not be heeded by Brahmans who have not lapsed, because it pertains to Vratyas, who somehow, due to fate, have not performed their expiatory rites. That being the case, the term “unavailable” in this statement is validated, because the acquisition of the Veda is precluded to such Vratyas. Accordingly, Manu’s treatise states:

Even in a time of adversity, a Brahman should never establish Vedic or matrimonial links[30] with such people, unless they have been cleansed according to rule. (*MDh* 2.40)

In this way, furthermore, the eligibility of twice-born people with respect to Pancaratra is also totally demolished. Therefore, because the cited text refers to Vratyas who have not performed their expiation by the power of fate, there is a distinction between the Veda and the Pancaratra.

For this very reason, moreover, when the Yoga-Yajnavalkya states that the Pancaratra is equal to the Pasupata and the like insofar as they are all Siddhantas, it in fact reveals that they are outside the Veda:

Only one, however, should be recognized as the means of effecting yogic union, and that is the mystic syllable O. This has been accepted by adherents of the seven Siddhantas, as well as by other knowers of Brahman—by the adherents of these seven Siddhantas: Hairanyagarbhas, Kapilas, Apantaratamas, Sanatkumaras, Brahmisthas, Pasupatas, and Pancaratras.[31] (*BYogYSm* 2.66–68)

In this way, we indeed conclude that the Pancaratra is authoritative only insofar as it is

irreproachable, but not insofar as it must be practiced.

Is it not true, further, that just as authoritative treatises such as the Veda arose with reference to a particular well-demarcated group of people, so we can assume that authoritative treatises such as the Shaiva operate with reference to high-caste Saivas and the like?[32]

That is not true, because in statements such as the following, Manu and others have demonstrated that only twice-born people have competence with regard to their own treatises, not that Shaiva Brahmans and the like have competence with regard to Shaiva treatises and the like:

> A man for whom it is prescribed that the rites beginning with the impregnation ceremony and ending with the funeral are to be performed with the recitation of Vedic formulas—no one but he is to be recognized as competent with regard to this treatise. (*MDh* 2.16)

Then let us assume that it is the Shudras who are competent with regard to Shaiva treatises and the like.

That is not true, because it is not accepted by texts of recollection and other authoritative treatises. Furthermore, there is no one who is a Shaiva by birth to whom the Shaiva treatises and the like may be addressed. Conversely, “Shaiva” is a treatise declared by Shiva, with the addition of the *a* affix according to the rule: “Declared by him” (Panini 4.3.101).[33] And, further, “Shaiva” is derived from “Shaiva,” meaning that one knows or recites the Shaiva treatise, according to the grammatical rules: “The affix *a* after a word denoting the subject of study in the sense of ‘he recites it,’ ‘he knows it’” (Panini 4.2.59), once the *luk* elision has been performed according to the rule: “After the title of a work, which is named after the one who declared it, the affixes denoting ‘he recites it’ or ‘he knows it’ are elided by *luk*” (Panini 4.2.64).[34] The same is true with regard to the terms “Pasupata” and the like.

Because, in this manner, the Shaiva treatises and the like originated without any reference to a certain group of people who are by nature clearly demarcated, so it is established that they are like pictures drawn in the sky. That being the case, in actual practice such treatises should be totally rejected.

One should not argue, moreover, that simply because these scriptures are well known as irreproachable, to follow them becomes incumbent on those belonging to the orders of life. For the mere fact that they are irreproachable does not make them capable of forcing people to follow their contents in the same way as the Vedic texts. The reason is that passages such as the following of Manu and others forbid people to follow them by such means as teaching their uselessness with respect to the hereafter:

> The scriptures that are outside the Veda, as well as every kind of fallacious doctrine— all these are said to bear no fruit after death, for texts of recollection take them to be founded on darkness. (*MDh* 12.95)

And therefore, in rituals of divine worship and the like, one should accept only the procedure that is well known from the *Narasiha Pura* and the like, and not anything else. The same should be understood also with regard to the initiatory rite; for in the initiatory rite well known from the Puranas there is no cleansing away of castes. Because in the Shaiva scriptures and the like, however, passages such as the following show that they are cleansed away, the result is the loss of eligibility to perform Vedic rites:

> The first caste[35] is the immobile; the next is considered the creeping creatures; the third is the bird caste; the fourth is the wild animal caste; the fifth is the domestic animal caste; the sixth is said to be the lowest-born; the seventh is the Shudra caste; the eighth is the Vaishya caste; the ninth is the Kshatriya caste; and the tenth is named Brahman. These castes, however, should be cleansed away by the Lord of castes or by Shiva.

Texts such as the following show that the Vedic rites originated specifically with respect to high-caste people: “A Brahman should establish the fires” (*TB* 1.1.2.6); “A king should perform the rite of royal consecration” (*B* 5.3.1.13); and “A Vaishya should offer the Vaishyastoma rite” (*TB* 18.4.5). How can that happen when castes have been eliminated?

Similarly, in the installation of divine images only the procedure given in the Puranas and the like is to be accepted, not anything else, because in the *Bhaviyat Pura* only these are recognized as having a mixed authoritativeness[36] with respect to dharma. Accordingly, the *Bhaviyat Pura* states:

> The eighteen Puranas; the life story of Rama; authoritative treatises such as the *Viudharma*; the *ivadharmas*, O Bharata; the fifth Veda of Krishna, which is said to be the *Mahbhrata*; *Sauras*, O best of dharmic kings, declared by Manu, O king—wise men give these the name Victory.[37] (*BhaviP* 1.4.86–88)

In the same text also, statements such as “Pour down liquor, O king, with the exception of the Madya liquor” should be understood to refer to a time other than the Kali Age, because in passages such as the following from the *Brahma Pura* and the like, Madya liquor and so forth are presented as things to be generally shunned:

> Living as a Vedic student for a long time, carrying a water pot, marrying someone from one’s own lineage or ancestry, slaughtering cows, human and horse sacrifices, Madya liquor—these should be shunned by twice-born people during the Kali Age.[38]

This also explains offerings to Candika and the like.

With regard to what is stated in the Klik Pura about the rule regarding collyrium, such as:

> Having placed a large quantity of sesame oil and ghee in a skull bowl, and taking lampblack during the eclipse of the moon and the sun, a wise man should anoint his two eyes with it; he will subjugate Indra.

that is absolutely adharma, just like:

> Then, someone who wishes to kill his enemy should kindle a fire with wood from a cremation ground and offer in that fire one thousand offerings of ghee mixed with poison and blood. Thus he will immediately kill his enemy.

or like:

One who is performing sorcery should offer the Hawk sacrifice. (*aBr* 4.2.1–2)

The reason is that, just like killing, ritual subjugation and the like are forbidden in various texts. Accordingly, Manu enumerates ritual subjugation within secondary sins causing loss of caste: “injuring plants, living off one’s wife, sorcery, and root witchcraft”[39] (*MDh* 11.64).

What, moreover, is stated in the *Dev Pura*—

Someone who knows the left-handed and right-handed scriptures and is an expert in the meaning of the mother and the Veda—he is a Sthapaka, the highest among goddesses and mothers.[40]

Someone who is proficient in the meaning of Pancaratra, an authority on mother’s Tantra—that man, if he is a householder, is praised by Vishnu, and if he is a celibate student, bestows peace.

Someone who knows the Shaiva doctrine and knows the meaning of planets and groups of mothers—that man, whether he is a householder or a celibate student, is celebrated as a Sthapaka for Shiva.

Someone who knows the meaning of Saura is a Sthapaka for Surya, the sun, and an auspicious worshiper.

—that also does not constitute an indicator for following outside scriptures, because following them is prohibited in the *Matsya Pura*. Accordingly, the *Matsya Pura* states:[41]

Listen to a brief definition of a Sthapaka, O Twice-Born Ones: he is an authority in Vedic mantras along with all the limbs,[42] knows the Puranas, understands dharma, is free from pride and greed, is born in the region where the black buck roams,[43] has pleasant features, is always devoted to the practice of purification, has no yearning for heretical ascetic groups, is the same to enemy and friend, and loves Brahma, Vishnu, and Shiva.

A Teacher, however, is always someone who knows the true meaning derived from rational analysis,[44] is an expert in the science of architecture, and is free from all faults.

The Protectors of Images, moreover, are of the same kind; they are honest and from good families.

Further, as in this statement of the *Pñcartra Sahit*,

Fourteen repositories of knowledge are to be recognized. They are: *Rig Veda*, *Yajur Veda*, *Sma Veda*, *Atharva Veda*, epics, Puranas, logic, exegesis, phonetics, ritual, grammar, etymology, astronomy, and metrics. Here too there is a lack of eligibility. On the contrary, there is indeed eligibility.[45]

only the knowledge found in the triple Veda and so forth is admissible, so here[46] also only the knowledge found in the left-handed and right-handed scriptures is admissible. Accordingly, the Yoga-Yajnavalkya states:

For in order to obtain the knowledge of the self, one should investigate the Siddhantas. When

a twice-born man studies them exclusively, he is placed outside the Veda. (*BYogYSm* 12.35)

Studying exclusively means practicing another's dharma by abandoning one's own dharma, because passages such as the following of the *Skanda Pura* and the like forbid that kind of practice:

When someone abandons his own dharma and becomes enamored with another's dharma, he is a Shudra thief, like the two eyes of a partridge resembling the moon.[47]

The knowledge of the left-handed and right-handed scriptures and the like, furthermore, is for the purpose of appropriating some elements that are anticipated by one's own authoritative texts and are not opposed to what is stated in those. This is stated by Manu:

Even when it is anticipated, the anticipation extends only to the anticipated epistemic source. That much only should be taken from another source, and nothing else, because of its uncertainty.

What is opposed, however, should be totally abandoned. For this very reason, moreover, the *Mahbhrata*, in its section on the king's dharma, with the intention of preventing the mixture of dharma, states:

The dharmas of the four social classes, furthermore, should be safeguarded by the king, for the protection of dharma from mixture is the eternal dharma of kings. (*MBh* 12.57.15)

And one should not argue:

The knowledge of the left-handed and right-handed scriptures by someone like a Sthapaka, who performs the Tantric embellishments such as installation of images according to his own dharma, takes place only after he has undergone the initiatory rite prescribed in those scriptures.

The reasons for this are: (i) that is not accepted as such in authoritative texts such as texts of recollection; (ii) it is not established, moreover, that treatises such as the left-handed and the right-handed, as presented, are restricted to individuals such as Sthapakas; and (iii) treatises such as the left-handed and the right-handed, being examined wholeheartedly after such things as scrutinizing their commentaries, are considered to be well embellished through numerous repositories of knowledge. Therefore, by explaining them completely, one eliminates just the embellishments, such as the Tantric installation of images, as simply playful frivolity.

With reference to the statement of the Lord to Daksa contained in the *Mahbhrata* and the like—

I will grant you again an outstanding wish. Accept it, O you of good vows, with a pleasant face. Listen to it here attentively.

Immense and difficult ascetic toil has been well practiced by gods and demons after extracting it from the Veda, from the Vedic supplements,[48] from Samkhya, and from Yoga according to ability.

Unprecedented, auspicious on all sides, facing all sides, imperishable, composed of the fifteen categories,[49] hidden, disparaged by the ignorant, and different from— but in some aspects similar to—the dharmas performed by the social classes and the orders of life—this

is stated in texts of recollection to be another order of life undertaken by people who have attained the inner self.

In the beginning I created first this Pasupata method. The copious fruit attained by a person who has properly performed it, may that be yours, O Illustrious One; give up your mental fever. (*MBh* 1, Appendix 28, 399–409)

—that does not indicate an obligation on the part of people belonging to the orders of life to follow the Pasupata treatise, because what the passage intends to say is simply that their results are the same. For there are statements such as the following in Pasupata scriptures: "He will obtain the fruit of performing the *Agnioma* sacrifice." But this does not demonstrate eligibility to perform that sacrifice. Nor is the following passage of the *Atharvairas Upaniad* an indication of the obligation to perform the acts prescribed in the Pasupata treatises, because here one only learns about the restrictive rule pertaining simply to the rubbing of ash on the body:

This is the vow. He should rub the body with ash. Therefore, this is the Pasupata vow for the liberation of the soul from its snare.[50]

Now, some state the following:

Because bathing with one's clothes on is prescribed in texts of recollection when a person touches a Pasupata and the like, moreover, one should not suppose that the intention is to state that their treatises cause pollution to people in the orders of life. The reason is that in the Krita Age, during a Soma sacrifice and the like, a bath is prescribed even for touching the brick altar that has been consecrated with numerous mantras. Furthermore, the minds of people like us do not bother to plunge into the following inquiry with respect to a matter that is within the sole province of scripture: "Is the untouchability of the brick altar due to its defilement or, like the faded flowers offered to Rudra, due to its sacredness?"

In reality, however, in texts such as the following, Shaiva adherents and the like display an aversion to experts in the triple Veda who have not undergone initiation, just as toward people of the lowest caste:

When a Brahman, even though he may know the four Vedas, has not been initiated into the Shaiva ritual, he should be considered a Shudra and should not be given instruction.

In the same manner, experts in the triple Veda think that Shaivas and the like, who acknowledge Shaiva and other scriptures, pollute by their sight and touch, just like outcastes, because it is so stated in a text of recollection:

Kapalikas, Pasupatas, and Shaivas, along with Karukas[51]—if someone is seen by them, he should look at the sun, and if someone is touched by them, he should bathe.

This alone is the most appropriate position, for authoritative texts also support this. Therefore, only by examining closely arguments such as those given in the Puranas should one pay heed to their performance.

One should not suppose, moreover, that the scriptures of outsiders have the same goal as the Vedas simply because here and there one finds similarities in the performances prescribed by each.

Even where there is an apparent similarity in the performances prescribed by the scriptures of outsiders, such as:

> Whether she is ugly or beautiful, auspicious or inauspicious, good or evil, one should never despise a woman.

even there one should conclude that they are restrictive rules applicable only to initiated individuals in the manner stated in texts such as the *Dev Pura*.

Therefore, it is settled that (i) texts of the Shaivas and the like are authoritative only insofar as they are irreproachable; and (ii) with regard to the obligation to follow them, only certain parts of them in some areas may be accepted as subsidiary elements, but they should not be followed in their entirety. Even there, it is established not only that what has been humanly authored should not be followed but also that it is to that extent without any authority and thus should be discarded.

For this very reason, teachers have stated:

> An authoritative text composed by human beings should not be followed, and it should be recognized as unauthoritative, for it resulted from human intelligence.

That's enough; let us not be long-winded!

[Here ends the excursus on non-Vedic scriptures.]

We[52] have stated that "practice of good people" means the practice of the cultured elite. In this regard, Baudhayana gives the definition of the cultured elite:

> Now, the cultured elite are those who are devoid of envy and without pride, who possess just a jarful of grain and are without covetousness, and who are free of hypocrisy, greed, folly, and anger.
>
> The cultured elite are those who have studied the Veda together with its amplifications[53] in accordance with dharma, know how to draw inferences from them, and adduce Vedic texts as perceptible proof. (*BDh* 1.1.5–6)

"Who possess just a jarful of grain" in intended as an implicit reference to a restricted livelihood. The amplifications of the Veda are the epics, Puranas, and the like, because of Manu's statement:

> He should augment the Veda with epics and Puranas.[54]

and, because of their invariable connection, also grammar and the like. Those who "know how to draw inferences from them" means those who know the texts of recollection, for these constitute the inference, that is, the invariable mark, of the respective Vedic text. "Adduce Vedic texts as perceptible proof": such people are those who accept Vedic texts as constituting perceptible proof. Statements in texts of recollection and practice are also perceptible, because they lead to the perceptible.[55] Manu states:

> A practice in that region handed down from generation to generation among the social

classes and the intermediate classes is called the "practice of good people." (*MDh* 2.18)

thinking that practices in regions such as the Brahmavarta are for the most part founded on the Veda, and not, however, thinking that the practice of good people is found only in Brahmavarta. If that were the case, even a practice of Brahmavarta that is founded on greed would be authoritative with respect to dharma, while a practice prevalent in another region, even though it is founded on the Veda, would not be authoritative.

Vasistha also states:

> The dharmas and the practices of the region to the east of Adarsa, west of the Kalaka forest, north of Pariyatra, and south of the Himalayas—north of the Vindhya— all those should be accepted; but not others, the depraved dharmas of the jungle.[56] (*VaDh* 1.8–11)

Here also the word "all" is used to mean "for the most part." In the statement "but not others, the depraved dharmas of the jungle" also, the meaning should be ascertained as follows. Not all dharmas and practices of other regions are to be accepted. The reason is that in those regions practices are for the most part based on greed and the like; only some are based on Vedic texts. Otherwise, a practice found in another region regarding which a basis such as greed is impossible would be without any foundation.[57]

8.3 LEGAL DIGESTS: *NIBANDHA*S

Devanna Bhatta (Circa 1200 C.E.)

Devanna Bhatta is one of the earliest writers of a legal digest covering all or most of the topics of dharma whose work has survived. Little is known about his biography, but he probably lived in southern India. Compared to other writers of this genre, however, he is clearly one of the most gifted. It is with reason that Duncan Derrett (1968: 167) calls him "a front-rank jurist." While most authors of legal digests are content with citing mechanically, one after the other, verses from texts of recollection and Puranas without any serious attempt to present their own argument, Devanna's *Smticandrik* ("Moonlight of Texts of Recollection") integrates the texts he cites into a coherent narrative that is his own. This trait is clear here and in a special way in his discussion of legal procedure in chapter 13.

In these selections from his extensive survey of the epistemology of dharma, Devanna introduces some striking innovations. First, he gives several canonical lists of texts of recollection at the very beginning of his discussion. Clearly, these lists were important to him, perhaps not so much because of what they included but because of the range of texts that they excluded. In this context, Devanna introduces for the first time the classification of these treatises into major (*smti*) and minor (*upasmti*) texts, probably in imitation of Puranas and Upa-Puranas.

He also presents a hierarchy among these treatises, with Manu outranking all the others. This is, of course, in sharp contrast to Medhatithi's view that Manu is not someone very exceptional. Thus, if any provision in a text of recollection contradicts what is stated in Manu's text, it loses all validity. Although the theory of world ages (*yuga*) and the dharmas specific to each was already known, Devanna elevates it here to a new level of importance and visibility.

[Saskraka, pp. 1–32][58]

Only the treatises on dharma that Manu and the like have authored are based on the Veda. Precisely for this reason, only they are authoritative with respect to dharma. So, as a help to understanding them, their authors are presented at the outset. In this regard, Paithinasi states:

> Of these, the following thirty-six seers are said to be the authors of texts on dharma: Manu, Angiras, Vyasa, Gautama, Atri, Usanas, Yama, Vasistha, Daksa, Samvarta, Satatapa, Parasara, Visnu, Apastamba, Harita, Sankha, Katyayana, Guru, Pracetas, Narada, Yogin, Bodhayana, Pitamaha, Sumantu, Kasyapa, Babhru, Paithinasi, Vyaghra, Satyavrata, Bharadvaja, Gargya, Karsnajini, Jabali, Jamadagni, Logaksi, and Brahmasambhava.[59]

The question may be raised as to whether this is an exhaustive list. Not at all, for if that were the case the authorship of treatises on dharma would be denied to Vatsa, Marici, Devala, Paraskara, Pulastya, Pulaha, Kratu, Rsyasrnga, Likhita, Chagaleya, and so forth. Nor should one say: “Let it be so!” The reason is that they are no different from Manu and the like with regard to their authorship of treatises of recollection founded on the Veda. For this very reason, Sankha has used the term “and so forth”:

> Manu, Yama, Daksa, Visnu, Angiras, Brihaspati, Usanas, Apastamba, Gautama, Samvarta, Atreya, Harita, Katyayana, Sankha, Likhita, Parasara, Vyasa, Satatapa, Pracetas, Yajnavalkya, and so forth.

Therefore, the proper course is to take the purpose of the list as simply illustrative. In this regard, Angiras states:

> Jabali, Naciketas, Skanda, Logaksi, Kasyapa, Vyasa, Sanatkumara, Santanu, Janaka, Vyaghra, Katyayana, Jatukarna, Kapinjala, Bodhayana, Kanada, and Visvamitra—the wise call these minor texts of recollection.

Next, the Puranas:

> *Brhma*, *Pdma*, *Vaiava*, *aiva*, *Bhgavata*, yet another, the *Nradya*, the seventh *Mrkeya*, the eighth *gneya*, the ninth *Bhaviya*, the tenth *Brahmavaivarta*, the eleventh *Laiga*, the twelfth *Vrha*, the thirteenth *Sknda*, the fourteenth *Vmana*, the fifteenth is said to be *Kaurma*, *Mtsya*, *Grua*, and the last *Brahma*.

The Veda, furthermore, is authoritative insofar as it has no dependence on an author. And so are texts of recollection and practices insofar as they are based on the Veda. That they are based on the Veda, moreover, results from the fact that they expound acts taught in the Veda. Accordingly, Bhrigu states:

> Whatever dharma Manu has proclaimed with respect to anyone, all that has been taught in the Veda, for it contains all knowledge. (*MDh* 2.7)

Sankha also states: “Of these, texts of recollection are founded on Veda.” This too refers only to those texts that have an unperceived purpose and not to those that have a perceived purpose. Accordingly, a Purana states:

> All these are founded on the Veda, excluding, however, those that have a perceived purpose.

Surely, if the treatises of recollection are founded on the Veda insofar as they focus on acts taught in the Veda, then the Veda itself is sufficient. What is the use of treatises on dharma?
Fearing such an objection, Marici states:

> Vedic statements are difficult to understand and, because they are scattered, they are fragmented. Those who know them have set down the same texts securely in the treatises of recollection, making their meanings clear.

In the same way it is established that the Puranas also are both authoritative and useful. For this very reason, a Vedic text, after enumerating the four Vedas, says: “The fifth is Itihasa and Purana” (*ChUp* 7.1.2). One should not suspect, moreover, that the Vedas and so forth are not authoritative by force of arguments based on such facts as that they are humanly authored, because such arguments are unfounded and because their faults have been pointed out. Accordingly, Manu states:

> If a twice-born man disparages these two by relying on the science of logic, he ought to be ostracized by good people as an infidel and a denigrator of the Veda. (*MDh* 2.11)

“These two” refers to the Vedas and texts of recollection. Yama also states:

> The treatises on dharma authored by these in former times are authoritative, and they should not be undermined by logical reasoning. Anyone who undermines them through logical reasoning sinks into blind darkness.

The use of “treatises on dharma” is intended to indicate also Puranas and the like. For this very reason, Vishnu states:

> Purana, treatise on dharma of Manu, Veda along with the supplements, and medicine—these four have been established by command and should not be undermined by logical reasoning. [60]

In the same manner, moreover, the authority of the authors of the aphoristic texts on the domestic ritual is not incompatible, because the texts are of benefit by showing how mantras taught in one’s own Vedic branch are employed in the set of life-cycle rites authored by Manu and the like. Likewise, Devala states:

Manu and the like are proclaimed as composers of treatises on dharma. The authors of the aphoristic texts on the domestic ritual are regarded as those who composed their works based on what Manu and the like composed.

2. EPISTEMIC SOURCES OF DHARMA

Next, the epistemic sources of dharma. On this, Yajnavalkya states:

> The Vedas coupled with Puranas, logic, hermeneutics, treatises on dharma, and supplements—these are the fourteen sites of the sciences, and of the dharma. (*YDh* 1.3)

Purana consists of *Brahma* and so forth.[61] Logic is argumentation. Exegesis is investigation into Vedic sentences. Treatises on dharma are the texts of recollection by Manu and so forth. The four Vedas are coupled with Vedic supplements such as gram mar. These fourteen are the repositories, that is, causes or epistemic sources, of knowledge systems, that is, of various kinds of knowledge,[62] as well as of dharma by way of the knowledge systems. Manu also states:

> The entire Veda is the root of dharma, as also the recollection and conduct of those who know it; likewise the practice of good people, and satisfaction of oneself. (*MDh* 2.6)

This is its meaning. “Veda is the root of dharma,” that is, the epistemic source with regard to dharma. So also the recollection and conduct of those who know the Veda; “conduct” refers to the avoidance of lust, hatred, and the like. “Practice” refers to such things as tying a bracelet.[63] “Satisfaction of oneself”: this shows that in the case of optional activities, when something pleases oneself as it is being carried out, this pleasure is also an epistemic source. Vyasa also states:

> They say that the root of dharma is the Veda, which is a collection of texts that is not produced,[64] as also the recollection and conduct of those who know it, the practice of good people, and what pleases the mind.

“Good people” refers to the cultured elite. Accordingly, Manu states:

> The practice of the cultured elite, texts of recollection, and the Vedas are the threefold characteristic of dharma.[65]

“Characteristic” means the epistemic source. Manu himself gives the essential character of the cultured elite:

> Those Brahmans who have studied the Veda together with its amplifications in accordance with dharma and are able to adduce as proofs express Vedic texts should be recognized as the cultured elite. (*MDh* 12.109)

Epics, Puranas, and the supplements are the amplifications of the Veda. Accordingly, Brihaspati states:

> One should amplify the Veda by means of epics and Puranas. The Veda fears a man of little learning, thinking: "This man will lead me astray."

The expression "able to adduce as proofs express Vedic texts" refers to people for whom, in learning dharma, Vedic texts are the direct cause.

Surely, if the practice of those who know the Veda is authoritative, then sex with Ahalya, Tara, and so forth on the part of Indra, Candra, and so forth should also be authoritative. But that is not the case. So, how can practice be authoritative? This has been stated by Gautama: "Transgression of dharma is seen, as also violence, in great men" (GDh 1.3). "Transgression" refers to such things as the cutting of his mother's head by Parasurama.

To this we reply. It is true that Indra and others had sex with Ahaly. Nevertheless, those yogins incurred no sin on account of their extraordinary power generated through ascetic toil. People like us do indeed incur sin in doing such things, because we lack that power. This is stated by Apastamba:

> They incurred no sin on account of their extraordinary power. A weak man born at a later time who, observing that, does the same, perishes.[66] (*pDh* 2.13.8–9)

Manu also states:

> Transgression of dharma is seen, as also violence, in great men. A weak man born at a later time who, observing that, does the same, perishes.[67]

Manu states that with respect to issues not addressed by his text of recollection and the like, the word of a legal assembly is authoritative:

> If it be asked: what happens in cases where specific dharmas have not been scripturally laid down? What Brahmans who are cultured elite state is the undisputed dharma. (*MDh* 12.108)

The term "dharmas" has the meaning "epistemic sources of dharma." These cultured elite, moreover, should number a minimum of ten. This is stated by Gautama:

> In a matter that is not scripturally laid down,[68] one should do what is commended by a minimum of ten persons who are cultured elite, skilled in reasoning,[69] and free from greed. (*GDh* 28.48)

The meaning is that one should follow what they state is commendable. Baudhayana also says:

> In the absence of these, there should be a legal assembly with a minimum of ten members.[70] (*BDh* 1.1.7)

“In the absence of these” means in the absence of Vedic texts and so forth. Yajnavalkya also states:

> Four who know the Veda and dharma or three who know the triple Veda constitute a legal assembly. What it declares is dharma; or just one person who is the most eminent among knowers of the highest self. (*YDh* 1.9)

Here “dharma” refers to treatises on dharma…. The intended meaning is that, alternatively, three individuals who know the three Vedas beginning with the *Rig Veda* and who know dharma constitute a legal assembly. Accordingly, Manu states:

> A man who knows the *Rig Veda*, a man who knows the *Yajur Veda*, and a man who knows the *Sma Veda*—these should be recognized as constituting a legal assembly with a minimum of three members for settling doubts regarding dharma. (*MDh* 12.112)

The expression “the most eminent among knowers of the highest self” means the best among those who know the highest self, who also knows dharma. What even a single individual like that pronounces to be dharma, that also is dharma. Vasistha also states:

> What men who have mastered the three Vedas and know dharma declare to be dharma, that is dharma for cleansing and for administering cleansing: in this there is no doubt. (*VaDh* 1 .16)

That also, Yama states, is authoritative just as Vedic texts and the like are:

> Vedas are authoritative. Texts of recollection are authoritative. A statement containing the meaning of dharma is authoritative. One should not take the words of a man as authoritative who does not accept these authorities as authoritative.

When a man does not regard the Vedas and the like as authoritative, a statement of his is not authoritative. Therefore, the intended meaning is that one should discard such a statement. Precisely because of this, Pracetas states:

> Outside scriptural texts should not be examined, as also others that reject the Veda— one should not do what they say. Dharma is set forth from the Veda.

Likewise, Manu states that tradition is also authoritative in some areas:

> The path trodden by his fathers, the path trodden by his grandfathers—let him tread along that path of good people; no harm will befall him when he travels by that path. (*MDh* 4.178)

“Tradition” is the practice that has come down the generations in one’s own family. This too should be considered applicable when scriptural texts are in disagreement. Accordingly, Sumantu states:

> When the course given in scriptural texts is divergent with respect to any rite, O Bharata—as the divergence with respect to the fire offering, stating that it should be offered after sunrise and before sunrise[71]—in such a situation, however, a wise man should follow the practice that has come down successively in his family. That practice is even superior, O great-armed one, to what is taught in any scriptural text.

Likewise, Apastamba states that agreement among those who know dharma also is authoritative:

> The authority is the agreement among those who know dharma; and the Vedas. (*pDh* 1.1 .2–3)

Furthermore, Manu states that, because a treatise on dharma is also of benefit with regard to dharma and because we hear of rewards for studying it, it should be studied:

> A Brahman who desires heaven should study this treatise on dharma constantly, just as he does the Veda. (*MDh* 1.103; additional verse)

Yama also states:

> Retaining the treatise on dharma, as also the Vedas, in the mind leads to wealth, fame, long life, merit, and heaven. By understanding the treatise on dharma, a man attains the world of Brahman.

Brihaspati also states:

> Vedic texts and texts of recollection are viewed as the two ultimate eyes of Brahmans. A man who lacks one of them is called one-eyed, and a man who lacks both is called blind. (*BSm*, Saskra, 228)

> People who have studied the four Vedas along with the six supplements, the Pada text, and the Krama text,[72] but lack the texts of recollection do not shine bright, like a star-spangled night sky without the moon. (*BSm*, Saskra, 227)

Manu also states:

> When a Brahman who keeps his vows studies this treatise, he is never sullied by faults arising from mental, oral, or physical activities. (*MDh* 1.104)

Here the term “Brahman” is used as a synecdoche for twice-born people. For this very reason, Yama states:

> When a Brahman, Kshatriya, or Vaishya studies this treatise, he purifies seven generations of ancestors who went before him, as also seven generations who come after him.

The following statement of Manu, however, is intended to deny this right to Shudras:

> This should be studied diligently by a learned Brahman, and it should be explained properly by learned men and by no one else. (*MDh* 1.103)

For this very reason, while presenting the topic of a Shudra’s eligibility, Yama states:

> Therefore, his eligibility does not extend to the Vedas or to texts of recollection.

Therefore, it is established that the eligibility to study extends only to twice-born individuals. The same, one must recognize, applies also to the performance of acts enjoined by them. For this very reason, Manu states:

> A man for whom it is prescribed that the rites beginning with the infusion and ending with the cemetery are to be performed with the recitation of mantras—no one but he is to be recognized as having the eligibility to study this treatise. (*MDh* 2.16)

“Infusion” refers to the impregnation ceremony, and “cemetery” refers to the funeral. Vyasa also states:

> Therefore, those who desire to maintain the purity of dharma declare that the performance of rites, with the exception of those given in texts of recollection and in the Vedas, pertains to persons who are not twice-born.[73]

Texts composed by the Buddhists and other such people, on the other hand, should never be followed, because they are not founded on the Veda. This has been stated in the *Caturviatimata:*

> The statements of Arhat and Carvaka,[74] and the declarations of the Buddha and the like are deceitful statements. A man should shun all of them.

Vyasa also states:

> Whatever there is other than these[75] calling itself “dharma,” know that it should be kept very far away. Resorting to it is regarded as folly. (see *DhKo* 5: 163)

What, then, should a man perform? Anticipating this question, Vyasa himself states:

> The rites that have been set forth in texts of recollection formerly by sages who knew best the meaning of the Vedas—these a man should perform diligently, and avoid anything that they prohibit.
>
> Whatever these best knowers of the meaning of the Vedas, desiring the welfare of the people, have ordained as dharma—one should not cause a deviation from that dharma.

[pages 12–15 have been omitted]

3. RELATIVE STRENGTH OF AUTHORITATIVE SOURCES

Next, we deal with the relative strength of Vedic texts and so forth. With reference to this, Manu states:

> When there are two contradictory Vedic texts on some issue, however, texts of recollection state that both are dharma with respect to it, for wise men have correctly pronounced them both to be dharma. (*MDh* 2.14)

When there is disagreement between two Vedic texts because they contradict each other on a particular issue, what is taught in both Vedic texts is dharma with regard to it, because they both have been declared to be dharma even by those who are earlier than Manu and so forth. The intention is to point out that there is an option between the two, because they have equal authority. This very statement intends to affirm an option also when there is a conflict between two texts of recollection. For this very reason, while dealing with the authority of texts of recollection, Gautama states:

> When those of equal power are in conflict with each other, there is an option. (*GDh* 1.4)

When there is a conflict between a Vedic text and a text of recollection, the text of recollection is, indeed, annulled. Accordingly, Logaksi states:

> When there is a conflict between a Vedic text and a text of recollection, however, it is the Vedic text that has greater force. When they are not in conflict, what is ordained in the text of recollection should always be performed, just like what is ordained in the Vedic text.

In the same manner, a practice also is, indeed, annulled when it is in conflict with a text of recollection, because of Vasistha's text of recollection:

> Dharma is laid down in Vedic texts and texts of recollection. In the absence of these, the practice of the cultured elite is authoritative. (*VaDh* 1.4–5)

The same should be regarded as applying also to any pronouncement of a legal assembly. This is stated in the *Caturviati*:

> Just as a text of recollection should be repudiated when it is in conflict with a Vedic text, so also a worldly pronouncement should be repudiated when it is contradicted by a text of recollection.

When on a particular issue, however, Manu's text is contradicted by some other text of recollection, what is ordained by Manu is, indeed, superior. This is affirmed by Angiras:

> Any statement made in contravention of the supreme treatise on dharma declared formerly by Manu is not beneficial to oneself.

Any other statement that contradicts what is ordained by Manu does not promote what is beneficial to oneself. Brihaspati also states:

> Manu's text of recollection is paramount, because its composition is taken directly from the Veda. Any text of recollection opposed to the tenor of Manu, however, is not approved. (*BSm*, Saskra, 13)

A Vedic text also states:

> Whatever Manu has ordained is medicine. (*TS* 2.2.10.2)

Vyasa has stated, moreover, that when there is a conflict between two dharmas, the weaker one is annulled:

> A dharma that contradicts a dharma is not a dharma at all. When a dharma is not contradicted, however, it is called dharma by good people.
>
> Therefore, when there is a contradiction, after ascertaining the relative strength of the dharma, a wise man should determine the one that has the greater preponderance to be dharma.

[section from page 17, line 14 until page 24, line 7 is omitted]

4. DHARMAS OF DIFFERENT REGIONS

Next, the dharmas of regions. On this point, Bodhayana states:

> There are five areas in which there is disagreement with respect to the south: eating in the

company of an uninitiated person, eating in the company of one's wife, eating stale food, and marrying the daughter of the mother's brother or the father's sister.

Likewise with respect to the north: selling wool, drinking spiritous liquor, trafficking in animals with teeth in both jaws, making a living as a soldier, and traveling by sea.

If the former does it in the latter, and the latter does it in the former, he becomes defiled. The authority of the region applies solely to each respective area.[76] (*BDh* 1.2.1–6)

This is its meaning. If "the former," that is, a southerner, does such things as eating in the company of an uninitiated person in "the latter," that is, in the northern region, he is defiled; but not if he does so in his own region. Likewise, if a northerner does such things as selling wool in "the former," that is, in the southern region, he is defiled; but not if he does so in his own region. Why is this so? Because of the authority of the region, that is, because the authority is restricted to the respective region. That is the meaning. Brihaspati also states:

Twice-born people of the south marry the daughters of their maternal uncles; in the Middle Region they work as laborers, craftsmen, and leather workers; in the east men eat fish and the women delight in adultery; in the north the women drink liquor, men touch menstruating women, and a uterine brother takes his brother's wife who has lost her husband. (*BSm*, Saskra, 401–3)

Brihaspati himself states the authoritative nature of these practices on the basis of the norms of each region:

Those dharmas of regions, castes, and families that are prevailing in them—they should be maintained as they are; otherwise the subjects will become agitated. (*BSm* 1.126–27)

Devala also states:

Whichever gods, Brahmans, water, soil, purification, and the practice of dharma there are in whichever region—one should never treat them with contempt; such is the dharma in each of those regions.

Whichever dharma is enjoined in whichever region, city, village, or town of people learned in the three Vedas, one should never cause a deviation from that dharma.

Likewise, with regard to adherence in general to the authoritativeness of the dharmas of regions, Manu states:

He should endorse the practices of virtuous men and righteous twice-born individuals, if such practices do not conflict with those of a particular region, family, or caste. (*MDh* 8.46)

The meaning of this is as follows. The practices of virtuous men that do not conflict with authorities such as Vedic texts, these he should endorse as having the character of dharma for regions, families, and castes. Likewise, Gautama states:

> The dharmas of regions, castes, and families are also authoritative if they are not in conflict with the sacred scriptures. (*GDh* 11.20)

> [page 26, lines 5 to 17 is omitted]

In the same manner, indeed, whatever goes against the norms of the world also should be rejected. This is stated by Varahamihira:

> Now, one should consider at the outset the practice of the region. Whatever the norm is in whichever region, that alone should be followed. Learned men avoid what people abhor; those who are astrologers follow the ways of the people. (*Vivhapaala* 72)

5. DHARMAS OF WORLD AGES

Next, the dharmas of world ages. With regard to this, Manu states:

> There is one set of dharmas for men in the Krita Age, another in the Treta, still another in the Dvapara, and a different set in the Kali, in keeping with the progressive shortening taking place in each age. Ascetic toil, they say, is supreme in the Krita Age; knowledge in the Treta; sacrifice in the Dvapara; and gift giving alone in the Kali.[77] (*MDh* 1.85–86)

"Ascetic toil" means painful fasts, lunar fasts,[78] and the like; "supreme" means primary. Brihaspati also states:

> Ascetic toil is stated to be the dharma in the Krita Age; knowledge in the Treta Age; sacrifice in the Dvapara; and gift giving, compassion, and self-control in the Tisya. (*BSm*, Saskra, 4)

"Tisya" means Kali. Parasara also states:

> In Krita Age, however, the dharmas are said to be those of Manu; in Treta those of Gautama; in Dvapara those of Sankha-Likhita; and in Kali those of Parasara.
>
> In the Krita Age a man should abandon the region; in Treta, the village; in Dvapara, just the family; and in the Kali Age the doer.
>
> In Krita one falls from caste by simply speaking; in Treta, by touching; in Dvapara, by accepting food; and in Kali, by action.[79] (*PrSm* 1.1.24–26)

Brihaspati also states:

> The dharma[80] produced in a year in the Krita Age is produced in three seasons in the Treta, in three fortnights in the Dvapara, and in one day in the Kali. (*BSm*, Saskra, 5)

In the *Viu Pura* also it is stated:

> What is produced in ten years in the Krita Age is produced in one year in the Treta, in one month in the Dvapara, and within a day and a night in the Kali. (*ViP* 6.2.15)

In the *Brahma Pura* also it is stated:

> The dharma produced in a year in Treta, texts of recollection say, is produced in a month in the Dvapara; and in Kali, a wise man performing it according to his ability achieves it in one day. (*BraaP* 1.31.72)

In the *Viudharmottara Pura* also it is stated:

> In the Krita a man should visit Puskara; in the Treta, Naimisa; in the Dvapara, Kuruksetra; and in the Kali one should resort to Ganga.

6. DHARMAS OF THE KALI AGE

Next, the dharmas of the Kali Age. With regard to this, Vyasa states:

> What a man obtains in the Krita by meditation, in the Treta by offering sacrifices, and in the Dvapara by performing worship—the same one obtains in the Kali by praising Kesava.
>
> Even with little effort, men who know dharma obtain here in the Kali Age a great increase of dharma. In the Kali, I am pleased by that.

In the *di Pura* also it is stated:

> The dharma of the Krita Age should not be performed in the Kali Age, because in the Kali both men and women are addicted to sin.
>
> Because in the Kali there is no erudition, no pure wealth, and no purity of the mind, truth alone is beneficial to men.

The same text, likewise, gives also the forbidden dharmas:

> Vedic studentship lasting a long time, the carrying of a water pot, marrying someone from one's lineage or from the ancestry of one's mother, killing cows, human sacrifice, horse sacrifice, and liquor—twice-born people should avoid these during the Kali Age.

Kratu also states:

> In the Kali one should not father a child through a brother-in-law, give in marriage a girl who has already been given, kill a cow in a sacrifice, or carry a water pot.

In the *Brahma Pura* it is stated:

> Remarriage of a married woman, special share of the eldest brother, killing cows, fathering a child through the wife of one's brother, and carrying a water pot—one should not do these five things in the Kali.

Similarly, others also present this authoritative statement based on the agreement of those who know dharma:

> The appointment of a brother-in-law to father offspring through a widow; marriage of a child or one who is still a virgin to another suitor; marrying virgins of a different social class by twice-born men; killing in a righteous fight a Brahman who is attacking someone; associating with a twice-born who has traveled by a ship in the sea even though he has been purified; consecrating all people for a sacrificial session; carrying a water pot; going on the great journey;[81] killing a cow during the Gosava sacrifice; associating with someone who takes liquor even during a *Sautrma* ritual; accepting communal licking of the sacrificial spoon; entering the forest hermit's order of life even when rules prescribe it; restricting the period of impurity depending on livelihood and Vedic recitation; penitential procedures for Brahmans that end in death; guilt of associating with people such as thieves; the expiation of great sins causing loss of caste; the rite of killing an animal for a bridegroom, guest, and ancestors; accepting as sons those other than an adopted son and a natural son; association on the parts of people of the same social class with sinners even though they may have been purified; the abandonment of the wife of an elder when sexual intercourse other than in the vagina has taken place; touching someone's body after the collection of bones; Brahmans acting as butchers; selling Soma; after fasting for six mealtimes,[82] accepting food from a man who performs base activities; taking the following among Shudras as people whose food may be eaten: servant, cowherd, family friend, and sharecropper; a householder going to a very distant place of pilgrimage; the prescription that a pupil should behave toward his teacher's wives just as toward his teacher; living according to rules for times of adversity on the part of Brahmans; the mode of life where one does not store food for the next day; Brahmans taking a surrogate woman to bear a child; sending Brahmans into exile; blowing on a fire with the mouth; having sex as prescribed with a sinful woman by force; an ascetic begging according to rule from all social classes; not using new water for ten days;[83] a fee solicited by the teacher; a Shudra doing cooking and the like for Brahmans and the like; people such as the aged killing themselves by jumping from a height or into fire; the cultured elite doing the rite of sipping using water left over from a cow slaking its thirst; imposing punishment on witnesses in conflicts between fathers and sons; staying in a house where they happen to be in the evening by sages devoted to truth—in the beginning of the Kali Age great and wise men, in order to protect the people, have put a stop to these activities, after first establishing a norm. The agreement of good people is authoritative just like the Veda.

Apastamba also states:

> The authority is the agreement among those who know dharma; and the Vedas. (*pDh* 1.1 .2–3)

PART TWO

Courts of Law and Legal Procedure

CHAPTER NINE

The Beginnings

The aphoristic texts on dharma contain some of the earliest reflections on legal procedure and the activities of the courts and judges in India. As we have already seen, the full integration of criminal and civil law and legal procedures into the science of dharma did not take place until Manu in the second century C.E. Yet the authors of the aphoristic texts on dharma did deal with some aspects of how disputes should be resolved, especially with respect to the kinds of evidence that should be entertained by judges. The discussions, however, are rudimentary and brief, and without a developed technical vocabulary.

9.1 APASTAMBA

(See headnote to ch. 1.1.)

Apastamba deals with legal procedure at the very end of his treatise. This discussion is embedded within his treatment of the king and his duties, especially concerning crime and punishment.

He begins his discussion with the technical term *vivde*, in a legal dispute. However, the individuals charged with resolving such disputes are simply called people who are learned and elderly; no technical term is used for a judge. Further, no mention is made of the judicial role of the king, something that became the cornerstone of later jurisprudence within the science of dharma.

Neither does Apastamba use the technical term *skin* for a witness in a lawsuit; he simply refers to the *mukhya* (chief), an ambiguous term perhaps referring to the lead witness. He does, however, refer to the ritual of swearing in the witnesses, which would become standard in later legal literature. The king is present at the swearing in, but he is not said to have any specific role in the judicial process. This may well have been the earliest practice in ancient India, as we will see also in Kautilya, who identifies the justice (*dharmastha*) as the official in charge of dispute resolution and the judiciary. A noteworthy point in Apastamba's analysis of evidence is that only living witnesses are mentioned; not until the Gupta era, with the treatise of Yajnavalkya, did documents come into prominence as evidence. Apastamba uses the term *daiva* (divine) for nonhuman kinds of evidence, perhaps oaths and ordeals, but does not spell these out. The term is related to *divya*, which became the standard term for ordeals from the time of Yajnavalkya.

> In a legal dispute, men who are learned, of good family, elderly, wise, and unwavering with respect to dharmas shall adjudicate, in doubtful cases investigating the matter through the evidence[1] and ordeals.
>
> In the morning of an auspicious day and in the presence of a blazing fire, water, and the king, both sides should be asked to present their case and, with everyone's approval, the

chief witness should answer the question truthfully. Should he answer untruthfully, the king should punish him; and in addition hell awaits him after death. Should he answer truthfully, he will go to heaven and will receive the praise of all beings. (2.29.5–10)

9.2 GAUTAMA

(See headnote to ch. 2.1.)

Gautama has the most extensive discussion of legal procedure of all the early authors. He addresses this topic in two parts of his treatise, chapters 11 and 13. Both are embedded within a broad discussion of the king and his duties that spans these chapters.

The first of the two (#1) begins with two significant words in the cryptic aphoristic (*stra*) style: *tasya vyavahra.* The pronoun *tasya* (his) clearly refers to the king, who is the subject of this entire section. For the first time the king is presented as the person who should adjudicate lawsuits. The second term, *vyavahra,* as we have seen, often refers to legal procedure, but in this particular usage it appears to have a more specific meaning, namely, the process of arriving at a just resolution or verdict.[2] For Gautama, this process must be based on various textual traditions, the first of which is the Veda, once again used in the singular (see *GDh* 1.1; ch. 2.1). But even Gautama, who is wedded in a special way to the primacy of the Veda, cannot escape the reality confronting judges. He speaks of the diverse dharmas (in the plural) of regions, castes, and families, and how various social and commercial groups and associations have authority to enunciate and dispense laws with respect to their own members. Even when their lawsuits are brought before the king, he is expected to ascertain the affairs from competent people of each group.[3] Gautama does not address the question of how all these diverse laws can be derived from the Veda. The discussion ends with the situation when the evidence provided cannot lead to a clear verdict. In such cases the king is instructed to consult with people (evidently Brahmans) learned in the Veda.

It is noteworthy that Gautama is the first author to use the term *vyavahra* in the sense of a lawsuit and/or legal procedure. This meaning would be picked up by Vasistha (16.1) and from Manu onward became standard.

Gautama returns to the problem of evaluating conflicting evidence in the second section (#2), which deals specifically with the most central kind of evidence evaluated in an ancient Indian court of law, that is, living witnesses. This is the first passage in the history of the science of dharma where the technical term *skin* is used for witness. Another technical term refers to the way witnesses are called to testify. At some point in the legal history of India the court required the litigants to present a list of their witnesses before the start of court proceedings. Gautama uses the technical term *nibaddha* (listed), which in Kautilya's *Treatise on Politics* often means "written down" but, even outside of writing, refers to people who are designated. Only a few qualifications are given: there should be several witnesses, and they should be men who are upright and virtuous.

Witnesses are expected to testify only when they are requested to do so by the court. They are advised to tell the truth under penalties here and in the hereafter. The enumeration of such penalties may have been part of the oath administered to the prospective witnesses.

Gautama also is the first to use a technical term for a presiding officer in a court other than the king. He is called *prvivka.*[4] This is an ancient term and probably referred to a senior court official who interrogated witnesses. In this passage also, the term occurs within the context of questioning witnesses, which is to be done either by the king personally, who then is designated the *prvivka,* or by a Brahman. Gautama also lists a group of officials within the court who become standard in later discussions. They are called *sabhya,* court officials or assessors who assist the judge in arriving at a decision.

His judicial conduct shall be based on the Veda, the treatises on dharma, the Vedic supplements, subsidiary Vedas, and Purana.[5] The dharmas of regions, castes, and families are authoritative when they are not in conflict with the scriptures. Farmers, merchants, herdsmen, moneylenders, and artisans exercise authority over their respective groups. The determination of dharma is to be carried out after ascertaining the affairs from such people according to their respective authority.

Reasoning is the means of reaching a correct judgment. Having reached a conclusion in this way, he should decide the case equitably. If there is disagreement, he should reach a decision after ascertaining matters from those who are deeply learned in the triple Veda, for, it is said, acting in that way, he will attain prosperity. (11.19–28)

2

If there is disagreement, the determination of the truth is based on witnesses. They should be many, of blameless reputation with respect to their duties, worthy of the king's trust, and neither friendly nor hostile toward either party. They may even be Shudras. A Brahman, however, should not be compelled to testify at the behest of a non-Brahman, unless he is listed.

Witnesses should not speak until they have been convened and questioned; and if they then refuse to speak, they commit an offense. If they speak the truth, they will go to heaven; if they do the contrary, they will go to hell. Even those not listed may be obliged to give evidence. No objection can be raised against a witness in cases involving violence or for what he may have said inadvertently. If the course of dharma is hindered, the guilt falls on the witnesses, the assessors, the king, and the perpetrator. According to some, the witnesses are to be placed under oath to speak the truth. For non-Brahmans it is done in the presence of divine images, the king, and Brahmans.

If a witness gives false testimony with regard to small farm animals, he slays ten;[6] with regard to cattle, ten times as many; with regard to horses, ten times as many as for cattle; with regard to human beings, ten times as many as for horses. If he gives false testimony with regard to land, he slays all; and if he steals land, he goes to hell. The penalty for false testimony with regard to land applies also to water, as also to sexual intercourse; the penalty in the case of farm animals applies also to honey and ghee; the penalty in the case of cattle applies also to clothes, gold, grain, and the Veda; and the penalty in the case of horses applies also to carriages. When a witness gives false testimony, he should be reprimanded and punished. It is not an offense to give false testimony if a man's life depends on it, but not if it is the life of a very evil man.

The king shall be the adjudicator, or else a learned Brahman. The witness[7] shall appear before the adjudicator. If he is unable to appear, the adjudicator may wait for one year, but in cases affecting cows, draught oxen, women, and begetting children, he should summon the witness immediately, as also when the matter is urgent.

Of all the dharmas, speaking the truth before the adjudicator is the most important. (13.1–31)

9.3 BAUDHAYANA

(See headnote to ch. 2.2.)

As already noted, the text of Baudhayana's work has come down to us in a mutilated state. So it is difficult to assess his discussion of legal procedure. The text as we have it has only a brief discussion solely focused on witnesses, set within a discussion of the duties of a king that spans 1.18–19. The section on witnesses opens abruptly, without any introductory comments about lawsuits or legal procedure.

Only a few points need to be noted here. Baudhayana lists several kinds of people who should

not be called as witness. This list would be widely expanded by later authors. He also uses the term *uddia*, which I have translated as "designated," to refer to a witness who has been listed at the beginning of the trial, a term that is probably a synonym of *nibaddha* used by Gautama.

To gain the respect of the world, a witness should give testimony consistent with what he has seen or heard.

One-quarter of an adharma[8] falls on the perpetrator, one-quarter on the witness, one-quarter on all the court officials,[9] and one-quarter on the king.[10]

When a man who should be condemned is, in fact, condemned, however, then the king is freed from guilt and the court officials are released; upon the perpetrator falls the guilt.

Sharp-witted, he[11] should interrogate a designated witness vigorously in the following manner:

> Whatever good you may have done from the day you were born until the day you will die, all that will go to the king, if you tell a lie.
>
> Indeed, he slays three fathers and three grandfathers, as also seven generations of his descendants born or yet to be born, when a witness gives false testimony.
>
> He, indeed, slays three grandfathers with false testimony concerning gold; five with false testimony concerning farm animals; ten with false testimony concerning cows; a hundred with false testimony concerning horses; a thousand with false testimony concerning men; and all with false testimony concerning land, when a witness gives false testimony.

Men of all four classes who have sons can be witnesses, except Vedic scholars, royals, wandering ascetics, and those who lack humanity.[12] If a witness abides by his recollection, he will receive praise from those in authority, whereas if he acts to the contrary, he will fall into hell. Such a man should drink hot milk for twelve days or offer ghee in the sacred fire while reciting the *Kma* verses.[13] (1.19.7–16)

9.4 VASISTHA

(See headnote to ch. 2.3.)

Vasistha's discussions of legal procedure are disjointed and spread across several disparate chapters. He begins his discussion promisingly with the introductory statement, "Next, legal procedures [or perhaps lawsuits]" (*atha vyavahr*), in the plural, indicating that the meaning of the term may also cover different kinds of lawsuits. But his treatment of the topic is not well structured, with several other topics, such as property rights and the royal entourage, intervening between sections of his presentation of legal procedure.

He identifies two individuals authorized to conduct court proceedings: king and counselor (*mantrin*). The second is unusual, because in other sources a *mantrin* is never presented as a judge. Vasistha also uses the technical term *sadas* to refer to a court of law, and *sadaskrya* as court proceedings.

At one point an inserted verse (16.10) presents three types of evidence: documents, witnesses, and possession. Vasistha uses the term *likhita* for a document, and later also the term *lekhya*. These terms are not used for legal documents in early literature, including Manu. So there is some doubt whether these sections of Vasistha, which is a text that has undergone extensive revisions over the centuries, are original. The issue of enjoyment or possession (*bhukti*) as one way to establish ownership would be subject to intense debate by later authors.

1

Next, legal procedures. The king or counselor should run the court proceedings. When there is a dispute between two parties, he should not take one side. (16.1–3)

The dharmas of regions and the dharmas of castes and families—after inquiring into all these dharmas, the king should make the four classes adhere to the dharma proper to each. (19.7)

2

Documents, witnesses, and enjoyment, texts of recollection say, are the three means of proof. In this way an owner may reclaim property that had previously belonged to him. (16.10)

When there is a conflict regarding a house or field, neighbors provide the proof.[14] When neighbors are in disagreement, documents provide the proof. When conflicting documents are produced, the proof is based on the testimony of aged inhabitants of the town or village and that of guilds. Now, they also quote:

> Ancestral property, what is bought, a pledge, what is received by a woman at her marriage, a gift, what is received for performing a sacrifice, property of reunited coparceners, and, the eighth, wages.[15]

Any of these is lost to the owner when it is enjoyed by someone continuously for ten years. But they also quote a verse to the contrary:

> A pledge, a boundary, the property of a child, an open deposit, a sealed deposit, women, a king's belongings, and the property of a Vedic scholar are not lost by being enjoyed. (16.13–18)

3

Next, witnesses. A Vedic scholar, a handsome man, a person of good character, a person who does good works, and a person who speaks the truth—these may act as witnesses. Or else, anyone at all may act as a witness for anyone.

> For women, women act as witnesses; for the twice-born, twice-born individuals of equal rank; for Shudras, upright Shudras; and for the lowest-born, those of the lowest birth.

Now, they also quote:

> A son is not obliged to repay the following: what his father owed as a surety or promised idly, debts he incurred gambling or drinking, and unpaid portions of fines or taxes.
>
> Speak the truth, O witness! Your ancestors hang in suspense awaiting your statement, in accordance with which they will soar up or come crashing down.
>
> Naked, blind, shaven-headed, and racked with hunger and thirst, a man who gives false

testimony will have to go to his enemy's house carrying a skull bowl to beg for almsfood.

When he gives false testimony concerning virgins, he slays five; concerning cattle, he slays ten; concerning horses, he slays a hundred; and concerning a man, he slays a thousand. [16]

....[17]

A man may tell a lie at the time of marriage; during a sexual encounter; when his life is at stake; when there is a risk of losing all his property; and for the sake of a Brahman. These five types of lies, they say, do not entail loss of caste.

If during a trial someone gives evidence that is partial to one side, either to help a relative or for money, he will cause the ancestors of both his spiritual lineage and his natural family, even those who are in heaven, to fall. (16.27–37)

CHAPTER TEN

The Early Theorists

In this chapter I deal with two theorists who, in contrast to the superficial treatment by the authors of the early aphoristic texts on dharma, grapple seriously and in detail with the issues relating to legal procedure: Kautilya and Manu.

It is fairly certain, as already noted, that Manu borrowed at least a major portion of his discussion of legal procedure from Kautilya. Manu's presentation, however, is sufficiently different from Kautilya's for us to conclude that he consulted other legal sources and/or created a new template for discussing legal procedure based on Kautilya's earlier work.

10.1 KAUTILYA

(See headnote to ch. 3.)

Kautilya's *Treatise on Politics* underwent a major redaction sometime after Manu. The issue with regard to the sections on legal procedure found in the third book is whether they belong to the later redaction or are part of Kautilya's original composition of the first century C.E. Arguments can be made for both positions, but I think the bulk of these sections pre-dates Manu.[1] Thus, in Kautilya's work we have the earliest comprehensive discussion of legal procedure, given that the data from the aphoristic texts on dharma are fragmentary and superficial.

The third book of Kautilya's *Treatise on Politics,* entitled *Dharmasthyam* ("On Justices"), devoted to law, legal procedure, and dispute resolution, begins with the constitution of a court (selection #1). A few significant points emerge from its opening statement. First, the officials presiding over a legal trial are called *dharmastha.* I have translated the term as"justice"[2] mainly because this official is encountered both in this book and elsewhere in the treatise, and his authority and duties went beyond dispute resolution. We have here for the first—and last—time the constitution of a bench consisting of three justices "of ministerial rank" (*amtya*), which must mean that there were justices of varying seniority, those of ministerial rank[3] being the most senior. Court sessions were held in various population centers, implying that people living in villages and outlying areas would have to travel to these locations to obtain legal remedy. Statements given below (#2), however, indicate that other kinds of courts, perhaps lower level and consisting of fewer judges, may have traveled to villages to conduct trials.

It is noteworthy that the word Kautilya uses for a lawsuit is *artha*, encountered also in later literature. This is the first time a technical term for a lawsuit is used. Unlike later authors, he does not use *vyavahra* with that meaning.

Having used the term *vyavahra* in the sense of a legally binding transaction, Kautilya proceeds immediately to define such a transaction, the only one subject to legal action in a court of law. The justices are entrusted with the task of judging the legal validity of transactions, and Kautilya lays

down both detailed rules for their validity and factors that would make a transaction null and void.

Topic 58, embedded within the first chapter of book 3, deals explicitly with court procedures (selection #2). Note the extensive use of technical terms by Kautilya, indicating a developed theory of court procedure. In most cases, these are the first uses of such technical terms in the extant literature. For legal terms in ancient Indian law, see Olivelle, Brick, and McClish 2015.

abhiyukta, accused, defendant: 3.1.25; 4.6.6.
abhiyoga, lawsuit: 3.1.26.
abhiyokt, plaintiff: 3.1.27.
adea, a document that is inadmissible in court: 3.1.17.
adhikaraa, court: 3.1.17.
gama, title to property: 4.6.7, 8.
anuia, a case in which a verdict has been rendered: 4.9.15.
artha, lawsuit: 3.1.1.
avastha, surety: 3.1.17.[4]
vedaka, defendant: 3.1.17.
dea, documentary evidence: 3.1.19.
hnadea, defective document: 3.1.19.
karma, torture during interrogation: 4.8.14, 17.
lekhaka, court scribe: 4.9.17.
niyamya, losing party, one subject to penalty: 3.1.24.
ni pat, to abscond, not to appear in court: 3.1.32–33.
parokta, loss of suit: 3.1.19–20, 27.
prati-abhi yuj, to countersue: 3.1.25.
prati br, to give a reply, to enter a plea: 3.1.27, 31.
prativdin, defendant: 3.1.17.
prama, evidence: 3.11.26.
sapratipatti, guilty plea: 3.11.25–26.
trita, a case already tried: 4.9.15.
vda, plaint: 3.1.19.
vdin, plaintiff: 3.1.17.
vedaka, plaintiff: 3.1.17.

The verb for countersuing also implies that *abhi yuj* is the technical term for filing a lawsuit or suing a person. This shows the great advance in legal thinking between the authors of the aphoristic texts on dharma and Kautilya. All later authors were indebted to him for creating the beginnings of a technical vocabulary that enabled a scientific inquiry into court proceedings, legal procedure, and jurisprudence in general.

We also encounter here for the first time the judicial practice of writing down the plaint and the plea. Once reviewed and, if necessary, revised, these cannot be changed; any change will result in the loss of the suit. We also see the practice of court charges, especially when the court held sessions in outlying districts and the court officials had to travel to them. These expenses were borne by the defeated party. Another judicial practice, documented here for the first time, is the prohibition against another suit being filed against the defendant before the first suit has been resolved, and against the defendant filing a countersuit against the plaintiff, except in very specific situations.

The methods of proving one's claim in a lawsuit and the process whereby the court arrives at a verdict are taken up in the eleventh chapter of book 3 (selection #3), on the nonpayment of debts (

dna). Kautilya is unusual in dealing with this central topic of jurisprudence so late in his discussion. All later authors place this first, but the practice of discussing legal procedure within the section on the nonpayment of debts persisted.

Even though Kautilya introduces legal documents with the unusual term *dea* in the first chapter,[5] he ignores all other kinds of evidence in favor of living witnesses. Indeed, it appears that until about the time of the Guptas (circa fourth century C.E.), legal documents played at most a subsidiary role in court proceedings. Even Manu features only witnesses in his discussions.

At the end of the first chapter of book 3 are two verses that appear to deal with four methods of arriving at a verdict (selection #4). These were probably added by a redactor at a date later than Manu, someone influenced by Manu's openly pro-Brahmanical ideology.[6]

In the next selection (#5) Kautilya deals with the legal procedures to be followed in criminal cases brought before a court of criminal justice. These courts are called *kaakaodhana* (literally, eradicating thorns), and the magistrates who were in charge of them are called *prade*. There has been a scholarly dispute as to whether there were criminal courts in ancient India, parallel to the civil courts that adjudicated disputes between individuals.[7] Although later legal texts within the science of dharma are silent on this point, it is abundantly clear from Kautilya's work that there was a parallel court system for adjudicating criminal offenses.

Unfortunately, Kautilya does not provide many details about how the *kaakaodhana* courts operated. My guess is that the details were omitted because many of the rules of procedure were similar to or identical with those followed in civil courts. There are, however, some passages that hint at a judicial procedure and confirm my assumption that the procedures in the two kinds of court were similar. In the eighth chapter of the fourth book is a statement that very much looks like the procedures of interrogation in a criminal case (see selection #5).

Kautilya also deals with situations when the proper legal procedures and court practices are not followed, and when judges and court officials become corrupt (selection #6). Often investigation of corrupt court officials is conducted through the employment of spies.

Kautilya's contribution to legal procedure is significant also because his is the only voice coming from a competing intellectual tradition, political science, while almost all the other authors dealing with this topic belong to the science of dharma. Political science as an intellectual tradition was located within or close to the centers of power, the chancery of the ruling elite, and the scholars of this tradition had different and more practical and political goals than their colleagues in the science of dharma. Had the tradition of political science remained alive and vibrant, the history of law in India might have had a different complexion. For more detailed explanations of the selections given here, see the notes in Olivelle 2013.

1

Justices of ministerial rank in groups of three[8] should conduct trials—in frontier posts, collection centers, district municipalities, and provincial capitals—of lawsuits arising from transactions.

They should invalidate transactions carried out in absentia[9] and those executed inside a house, at night, in the wilderness, by fraud, or in secret. Both the person executing it and the person who gets it executed receive the lowest seizure fine;[10] each of the witnesses individually receives half that fine. Those taking part in good faith, however, forfeit the object.

Transactions carried out in absentia shall be valid when a debt is secured with an absent pledge or when they are viewed as not blameworthy. Transactions executed inside a house shall be valid when they are connected with inheritance, consignments, deposits,[11] and marriage or contracted by secluded women and sick persons of sound mind. Transactions executed at night shall be valid when they are connected with forcible seizure, trespass, brawl, marriage, and royal command, and when they are contracted by individuals carrying out business in the early part of the night.[12] Transactions

executed in the wilderness shall be valid when they are done by people moving about in the wilderness amid caravans, herds, hermitages, hunters, and bards. Transactions executed by fraud, moreover, shall be valid when they are among individuals with secret occupations; and transactions executed in secret shall be valid when they are done within a secret association.[13]

Transactions other than these shall not be valid, as also those executed by dependents, by a son living with his father, by a father living with his son, by a brother excluded from the family, by a younger son who is a coparcener, by a woman living with her husband or son,[14] by a slave or a person given as a pledge,[15] by one who is below or beyond the legal age,[16] and by a notorious criminal, renouncer, cripple, or someone who has fallen on hard times—except when they have been appointed to execute the transaction.

Even in such cases,[17] transactions executed by a person who is enraged, deeply afflicted, intoxicated, insane, or under someone else's control shall not be valid. Those who execute such transactions, those who get them executed, and those who act as witness should be individually assessed the prescribed fine.

In each respective group,[18] however, all transactions shall be valid when they are executed at the proper place and time, by someone with proof of ownership, observing all the formalities, with valid documentation, and noting the appearance, distinctive marks, quantity, and quality of the items. And among these, the last document should be trusted, except in the case of a directive or a pledge.[19] (3.1 .1–16)

2

[TOPIC 58: WRITING DOWN THE SUBJECT OF LITIGATION[20]]

He[21] should first write down the year, the season, the month, the fortnight, the day, the time,[22] the court, and the debt, as also the region, village, caste, lineage, name, and occupation of the plaintiff and the defendant, after they have provided competent sureties. Then he should record the interrogations of the plaintiff and the defendant according to the sequence of topics; and he should review[23] what he has recorded.

The man casts aside the plaint as recorded and moves on to another plaint; does not make a point made subsequently accord with what was stated previously; after challenging an unchallengeable statement of the opponent, remains obstinate; promises to produce a document,[24] but when told "Produce it," does not produce it, or produces a defective document or something that does not constitute documentary evidence; puts forward a document different from the document specified; denies a significant statement in the document he has put forward, saying, "It is not so"; does not accept what has been ascertained through witnesses; secretly carries on a discussion with witnesses with regard to a document that is prohibited from being discussed—these are the reasons for loss of suit.

The fine for loss of suit is one-fifth of the amount. The fine for voluntary admission is one-tenth of the amount.

Wages for the men[25] are one-eighth.[26] Provisions for travel are assessed according to the prevailing prices. The losing party has to pay both of these.

An accused shall not bring a countersuit, except in the case of a brawl, a forcible seizure, a caravan, and an association.[27] An accused, furthermore, cannot be subjected to another lawsuit.

If, after receiving a response,[28] the plaintiff does not offer a reply on that very day, he loses the case; for it is the plaintiff who made the decision with regard to the lawsuit, not the defendant. If the latter does not offer a reply, he may be allowed three or seven days. Thereafter, he should be fined a minimum of three Paṇas and a maximum of 12 Paṇas. If he does not reply after three fortnights, he should impose the fine for loss of suit and pay the plaintiff's claim from whatever property the

defendant may possess, with the exception of the tools of his trade. He should do the very same to a defendant who absconds. The plaintiff loses the case the moment he absconds. (3.1.17–33)

3

[TOPIC OF WITNESSES]

It is best if an admission is made.[29] When there is no admission, however, witnesses provide the evidentiary proof, witnesses who are trustworthy, honest, or endorsed,[30] and a minimum of three; or, if approved by the parties, even two; but never one with regard to a debt.[31]

The following are forbidden: a brother of the wife, an associate, a dependent, a lender, a borrower, an enemy, a cripple, and a man subjected to judicial punishment; as also those previously mentioned as ineligible to execute transactions (see selection #1); the king, a learned Brahman, a village servant,[32] a leper, and a man with sores; an outcaste, a Candala, and one following a despicable profession; anyone who is blind, deaf, dumb, or self-appointed;[33] and a woman or an official of the king— except within their own groups. In cases concerning assault, theft, and sexual offenses, however, all these are allowed, except an enemy, a wife's brother, and an associate. In the case of secret transactions, a single woman or man who has heard or seen it can be a witness, except the king and an ascetic.

Masters may testify for their servants, priests and teachers for their pupils, and a father and mother for their sons—and vice versa—without being forced to do so. When they sue each other, moreover, the superiors who lose the case shall pay one-tenth of the amount under litigation, and the inferiors one-fifth.

That concludes the qualification of witnesses. (3.11.25–33)

[EXAMINATION OF WITNESSES]

He should impanel the witnesses in the presence of Brahmans, a pot of water, and fire. In that context, to a Brahman he should say: "Speak the truth!" To a Kshatriya or a Vaishya: "May you not receive the fruit of your sacrifices and good works! A potsherd in hand, may you go to your enemy's house to beg for almsfood!" and to a Shudra: "Any fruit of your meritorious deeds between your birth and death, all that will go to the king, and the sins of the king to you!—if an untruth is spoken. Punishment will also follow. Afterward, furthermore, facts as seen and heard will become known. Single-mindedly present the truth." Those who fail to present it are fined 12 Paas after seven days; after three fortnights, they should pay the claim.

When the witnesses are divided, they should settle in favor of the party that has the support of the majority, or of those who are honest, or of those who have been endorsed; alternatively, they should adopt the middle course.[34] Or else, the king should take that property.

If the witnesses attest to an amount less than the claim, the plaintiff should pay the excess amount as a penalty. If they testify to an amount in excess of the claim, the king should take the excess.

With respect to anything that has been poorly witnessed or badly written down through the folly of the plaintiff, or where the person providing the affidavit has died, the ascertainment, after a thorough examination, should be based solely on witnesses.

"When through the folly of the witnesses, they give conflicting answers to questions with regard to place, time, and subject of the lawsuit, the lowest, the middle, and the highest fine,[35] respectively, should be imposed on them": so state the Ausanasas. "When false witnesses sustain a bogus lawsuit or overturn a truthful lawsuit, they should pay ten times that as a fine": so state the Manavas. "Or, for those who, through their folly, break their trust, execution with torture": so state the

Barhaspatyas. “No,” says Kautilya; “for witnesses perforce must testify truthfully. Twenty-four Paas is the fine for those who fail to testify truthfully, half of that amount for those who do not speak.”

He should produce witnesses located not too distant in place and time; he should produce those who are far away or do not budge by means of a royal summons. (3.11.34–50)

4

Dharma, judicial process, custom, and royal decree: these are the four feet of the subject of a legal dispute; each succeeding one countermands each preceding one.[36]

Among these, dharma rests on truth, judicial process on witnesses, and custom on the consensus of people, while royal decree is a king’s command. (3.1.39–40)

5

[INTERROGATION OF AN ACCUSED IN A CRIMINAL CASE]

In the presence of the victim of the theft, as well as external and internal witnesses, he should interrogate the accused about his country, caste, lineage, name, occupation, wealth, associates, and residence. He should corroborate these facts by checking them against other depositions. Then he should interrogate him about what he did the previous day and where he spent the night until his arrest. If he is corroborated by the person providing his exoneration, he is to be considered innocent; otherwise, he is to undergo torture.

A suspect may not be arrested after the lapse of three days, because questioning becomes infeasible—except when the tools are found on him.

For a man who calls someone a thief when he is not a thief, the fine is the same as that for a thief; so also for anyone who hides a thief.

When a person accused of being a thief has been inculpated because of enmity or hatred, he is to be considered innocent. For someone who keeps an innocent man in custody, the punishment is the lowest seizure fine.[37]

Against someone on whom suspicion has fallen, he should produce tools, advisers, accomplices, stolen goods, and agents; and he should corroborate his action by checking it against the entry, the receipt of the goods, and the partition of shares.

When these kinds of evidence are lacking, he should consider him as just a blabbermouth and not a thief. For we see that even a person who is not a thief, when by chance he runs into thieves making their way and is arrested because his clothing, weapons, and goods are similar to those of the thieves or because he was lingering where the stolen goods of the thieves were found, may, just like Mavya-of-the Stake,[38] confess “I am a thief” even though he is not, because he fears the pain from torture. Therefore, he should punish only a man against whom there is convincing evidence.

He should not subject to torture a person who has committed a small offense, a child, an old person, a sick person, an intoxicated person, an insane person, a person wearied by hunger, thirst, or travel, a person who has eaten too much or whose food is still undigested, or a weak person. He should have such people spied on by persons of the same character, prostitutes, attendants at water booths, or those who give them advice, accommodation, or food. He should outwit them in this way, or in the manner explained in the section on the theft of a consignment.[39]

When there is likelihood of someone’s guilt, he should subject him to torture, but never a woman who is pregnant or within a month after giving birth—for a woman, however, half the normal torture or just oral questioning; for a Brahman, the employment of secret agents, as also for learned men and ascetics. When this rule is violated, both the torturer and the one who authorized the torture should be assessed the highest fine, as also for a death resulting from torture.

There are four kinds of conventional torture: six strokes with a stick, seven lashes with a whip, two suspensions, and the water tube. Beyond that, for those who have committed grave crimes there are: nine strokes with a cane, twelve lashes with a whip, two thigh bindings, twenty strokes with a Naktamala twig, thirty-two slaps, two scorpion bindings, two hangings, needle in the hand, burning one digit of a finger of a man after he has drunk gruel, heating in the sun for one day for a man after he has drunk oil, and sleeping during a winter night on a bed with points of Balbaja grass. These are the eighteen types of torture.[40]

The instruments used in it, its extent, the manner of inflicting it, its prognosis, and its restriction: these he should learn from the *Kharapaa*.[41] He should subject a person to torture on alternate days, and only to a single torture on any one day.

Someone who has previously committed a crime, someone who confesses and then retracts, someone in whose possession a portion of the loot is found, someone who has been arrested by reason of the act or the stolen goods, someone who embezzles from the king's treasury, or someone subject to death by torture on the king's orders—he should subject these to torture administered collectively, individually, or repeatedly. (4.8.1–26)

If he comes across the reported article, he should ask the man arrested with the article about his legal title to it, saying: "Where did you get this?" If he were to say: "I obtained it through inheritance. I received it—bought it, got it made, received it secretly as a pledge—from that individual. This is the place and the time of its acquisition. These are its price, size, distinguishing marks, and value," he should be released when his legal title to it has been substantiated. If the person who lost the article were to establish the same, he should recognize that the article belongs to the person who possessed it first and longer, or who has a valid document of title; for even among quadrupeds and bipeds there is similarity in appearance and distinguishing marks— how much more among forest produce, ornaments, and wares produced with material from the same source and by the same manufacturer?

If he were to say: "This is something borrowed—something rented *or* received as a pledge; *or* a deposit; *or* a security; *or* something received for sale on commission— belonging to so-and-so," he should be released when he is corroborated by the person who is to provide his exoneration. (4.6.7–11)

6

[ON CORRUPTION IN THE JUDICIARY]

After winning his confidence, a secret agent should tell a justice or magistrate: "A lawsuit has been filed against this relative of mine. Remedy this misfortune of his, and do accept this money." If he does so, he should be sent into exile as a bribe taker. (4.4.6–7)

If a justice threatens, reprimands, drives out, or suppresses[42] a man who has filed a lawsuit, he[43] should impose on him the lowest seizure fine;[44] if there is a verbal assault, the fine is doubled. If he questions someone who should not be questioned; does not question someone who should be questioned; or after questioning brushes it aside; or if he tutors, reminds, or prompts him, he should impose on him the middle seizure fine. If he does not request a document that needs to be produced, requests a document that need not be produced, lets the case proceed without documentary evidence, dismisses it under some pretext, drives away by delays someone who becomes tired, rejects a statement properly presented, assists witnesses with their memory, or takes up a case that has already been adjudicated and for which a verdict has been rendered, he should impose on him the highest seizure fine. In the case of a repeat offense, the fine is doubled and he is removed from office.

If the court clerk does not write down what was said, writes down what was not said, writes

correctly what was badly said, writes incorrectly what was correctly said, or alters a clear meaning, he should impose on him the lowest seizure fine, or else a punishment corresponding to the crime.

If a justice or a magistrate imposes a monetary punishment on a person who does not deserve punishment, he should impose on him a fine equivalent to double the amount he imposed; or eight times the amount by which it is less or more than the prescribed fine. If he imposes corporal punishment, he should himself suffer corporal punishment; or double the standard reparation. Alternatively, when he dismisses a truthful lawsuit or sustains a bogus lawsuit, he should pay eight times that[45] as a fine. (4.9.13–20)

10.2 MANU

(See headnote to ch. 4.)

Manu was writing a century or so after Kautilya, and it appears that he had before him a copy of the original version of Kautilya's *Treatise on Politics* as he composed his sections on the duties of a king (ch. 7) and on legal procedure (chs. 8–9).[46] Although dependent on Kautilya, Manu introduced several new elements into his discussion, especially in the division of the titles of law into eighteen and in their order of enumeration.

Manu comprehensively integrated the discussion of statecraft, judiciary, and legal procedure, which were probably within the domain of political science previously, within the discourse of the science of dharma. He also espoused more aggressively the ideology of Brahmanical exceptionalism. The Brahman was a privileged member of society, and the king succeeded only if he recognized Brahmanical privileges and followed the advice of learned Brahmans. Manu also states that judges in courts of law have to be Brahmans, thus placing the Brahman at the very heart of the legal system.

Selection #1 includes several noteworthy innovations. First, according to Manu, the judicial authority of the state rests very clearly in the king; there is no separate or independent judiciary like the one advocated by Kautilya. When the king is unable to perform this function, he may delegate his judicial authority to another person or persons, who then function as judges in his place. Although this was probably not a new ideology, this is the first time in the history of Indian jurisprudence that it is spelled out so clearly. The only parallel is Vasistha, who merely states that the king or his counselor should adjudicate lawsuits (ch. 9.4: #1), putting the two on an equal level. Second, a plaintiff must identify one of the eighteen subjects under which he is filing his lawsuit. Finally, the standards applied in adjudicating lawsuits are twofold: those of the region and those given in what Manu calls *stra.* I have translated the term as "legal texts," but it could have a broader meaning, including the Veda. In any case, it is significant that the standards of the region are mentioned first; these must refer to the practice (*cra*) that we discussed within the epistemology of law. The Sanskrit for "standards" is *hetu,* which refers broadly to the standards of proof required in a particular dispute.

In the passages in selection #2, we find an even clearer articulation of the principle that judicial power is vested solely with the king. It is he who de jure exercises judicial power, even though in practice he delegates this power to professional judges.

The person whom the king appoints to try cases in his place is not given a special or technical name. Manu simply calls him "a leading minister" or "a learned Brahman," in contrast to the technical terms *dharmastha* (justice or judge in civil cases) and *prade* (magistrate in criminal cases) used by Kautilya. The term *prvivka* that Manu uses in the context of examining witnesses[47] most likely refers to a court official designated to interrogate witnesses rather than to a judge, even though in medieval legal literature this term is used also with reference to a presiding judge.

Another legal principle articulated by Manu in these passages is that the state, whether the king

himself or an officer of his, cannot initiate a lawsuit. This clearly applies to civil suits, and there are exceptions made with regard to particular people and institutions on behalf of whom the state is authorized to intervene.

Finally, cases are adjudicated not according to some abstract or universal law or dharma but in keeping with the local customs and norms, once again undermining the epistemological principle articulated in the abstract that all law is derived from the Veda.

In selection #3 is a passage that is a paraphrase and versification of a section from Kautilya's treatise (3.1.19; ch. 10.1: #2) given above. This passage of Manu is the only place in the entire literature of the science of dharma where the term *dharmastha* is used with respect to a judge, indicating that Manu is here following even the vocabulary of Kautilya. This is also the only place where Manu alludes to documents within the context of evidence, again using the technical term *dea* encountered in Kautilya.

Manu has one of the longest and most detailed accounts of witnesses and their testimony, and of how the court is expected to assess the veracity of that testimony (selection #4). No person is qualified to give testimony simply because he has knowledge of the issues before the court. Within a patriarchal and highly hierarchical social system, only certain individuals belonging to certain segments of society were so qualified, except in very special situations. Certain special individuals are excluded because of their very status within society, such as the king, learned Brahmans, and religious professionals. The social status of the litigants also has an impact on who is permitted on the witness stand.

Witnesses must be listed by the plaintiff and the defendant at the very start of the trial, though in exceptional circumstances others not initially listed may be permitted to testify, if in the judgment of the court their testimony will lead to a just verdict. Manu points to factors, including the demeanor of a witness, that may indicate false testimony. Perjury is a serious crime, and Manu specifies various penalties for false witnesses, even though under some conditions, such as death penalty cases, giving false testimony is permitted.

When human testimony is unable to resolve a dispute, Manu permits oaths (*apatha*). He does not make a clear distinction between an oath and an ordeal; at 8.114–16 he describes the fire and water ordeals within the context of oaths. He does not employ the term *divya,* which became standard after Yajnavalkya, to designate ordeals.

A verdict that is based on perjured testimony should be declared null and void and must be set aside. Manu (8.117) uses several technical terms in this context: *kta* to refer to a verdict that has been duly rendered in a court; *akta* to refer to a verdict that is overturned; and *nivartayati* for the act of a superior court that sets aside a previously rendered verdict.[48]

1

When the king is going to try lawsuits, he should enter the court modestly accompanied by Brahmans and counselors[49] who are experts in policy. Seated or standing there, dressed in modest clothes and ornaments, and raising his right hand, he should look into the cases of the plaintiffs every day in accordance with the standards prevalent in the region and those specified in the legal texts, lawsuits that fall individually under the eighteen avenues of litigation.

Of these, (i) the first is nonpayment of debts; (ii) deposits; (iii) sale without ownership; (iv) partnerships; (v) nondelivery of gifts; (vi) nonpayment of wages; (vii) breach of contract; (viii) cancellation of a sale or purchase; (ix) disputes between owners and herdsmen; (x) the dharma on boundary disputes; (xi) verbal assault; (xii) physical assault; (xiii) theft; (xiv) violence; (xv) sexual crimes against women; (xvi) dharma concerning husband and wife; (xvii) partition of inheritance; and (xviii) gambling and betting. These are the eighteen subjects on which litigation may be instituted in this world.

These are the areas in which, for the most part, disputes among people arise; and the king should decide their cases based on the eternal dharma. (8.1–8)

2

When he becomes tired of trying lawsuits filed by people, he should install on that seat a leading minister who knows dharma, is wise and self-disciplined, and comes from an illustrious family. (7.141)

When the king does not try a case personally, however, he should appoint a learned Brahman to do so. Entering the main court itself accompanied by three assessors, he should try the cases brought before the king, either seated or standing. The place where three Brahmans versed in the Vedas and a learned officer of the king sit, they call the court of Brahman.

When dharma, pierced by adharma,[50] comes to the court for redress and the court officials do not pluck out that dart from him, then they are themselves pierced by it. A man must either not enter the court or speak candidly; by refusing to speak or by speaking deceitfully, he commits a sin. When dharma is struck by adharma and truth by untruth, while the court officials remain idle onlookers, then they are themselves struck down. Stricken, dharma surely strikes back; defended, dharma defends. Therefore, never strike at dharma, lest dharma, stricken, wipe us out. Lord Dharma is truly the bull, and a man who impedes him the gods call a lowborn.[51] Therefore, one should never trample dharma. Dharma is the only friend who follows a man even in death, for all else perishes along with the body.

One-quarter of an adharma falls on the perpetrator, one-quarter on the witness, one-quarter on all the court officials, and one-quarter on the king. When a man who should be condemned is, in fact, condemned, however, then the king is freed from guilt and the court officials are released; upon the perpetrator falls the guilt.

Let a king, if he so wishes, get someone who is a Brahman only in name to interpret dharma, or even someone who simply uses his birth to make a living, but under no circumstances a Shudra. When a Shudra interprets dharma for a king, his realm sinks like a cow in mud, as he looks on helplessly. The entire realm, stricken with famine and pestilence, quickly perishes when it is teeming with Shudras, overrun by infidels, and devoid of twice-born people.

Ascending the seat of dharma with his body covered and his mind composed, he should pay homage to the guardian deities of the world and open the trial. Paying attention only to these two—what is and what is not in accord with the provisions of polity, and what is and what is not in accord with the dharma—he should try all the cases brought by litigants in the order of their social class.

He should discover the internal disposition of men by external signs—voice, color, expression, bearing, eyes, and gestures. Inner thoughts are discerned by the bearing, expressions, gait, gestures, and manner of speaking, and by changes in the eyes and face. (8.9–26)

He who knows dharma should examine the dharmas of castes and regions, as also the dharmas of guilds and the dharmas of families, and only then settle the dharma specific to each. Even men living far away endear themselves to the world when they stick to and carry out their specific activities.

Neither the king nor any official of his shall initiate a lawsuit on his own; nor shall he in any way suppress an action brought before him by someone else.

As a hunter traces the location of an animal by the trail of blood, so a king should trace the location of dharma by deductive reasoning. When he is conducting a judicial proceeding, he should pay close attention to the truth, the object of the suit, himself, the witnesses, the place, the time, and the appearance.

He should ratify the acknowledged practices of virtuous men and righteous twice-born individuals, if such practices do not conflict with those of a particular region, family, or caste. (8.41–46)

3

When the debtor, told in court to pay up, denies the charge, the plaintiff should produce a document or offer some other evidence.

When the plaintiff produces something that is not documentary evidence; produces and then disavows it; does not realize that his earlier points contradict the ones he makes subsequently; states his case and then backs away from it; does not acknowledge under questioning a point that has been clearly established; secretly discusses with witnesses a document that is prohibited from being discussed; objects to a question clearly articulated; retreats; does not speak when he is ordered "Speak!"; does not prove what he asserts; and does not understand what goes before and what after—such a plaintiff loses his suit. When a plaintiff says, "I have people who know," but when told "Produce them" does not produce them, the justice should declare him the loser for these very reasons.

If the plaintiff fails to present his case, he is subject to corporal punishment and a fine in accordance with dharma; and if the defendant fails to respond within three fortnights, he loses the case in the eyes of dharma. The amount that one man falsely denies and the amount that the other falsely claims—the king should impose a fine equal to double those amounts on those two men proficient in adharma.

When a man who has given a surety is questioned by a creditor and denies the charge, he may be convicted through the testimony of at least three witnesses given in the presence of the king and Brahmans. (8.52–60)

4

[QUALIFICATIONS OF WITNESSES]

I will now explain what sorts of individual creditors may call as witnesses in legal proceedings and how they should be made to speak the truth.

Householders, men with sons, natives of the region, Kshatriyas, Vaishyas, and Shudras, when they are called by the plaintiff, are competent to give testimony, and not just anybody, except in an emergency. Trustworthy men of all social classes may be called as witnesses in lawsuits, men who know dharma in its entirety and are free from greed; individuals different from these should be excluded.

Individuals who have a stake in the suit; individuals close to the litigants; their associates and enemies; individuals with a criminal record; the very sick; and men of ill repute—these must not be called as witnesses. The king may not be called as a witness, nor should the following: an artisan; a performer; a Vedic scholar; an individual bearing the insignia of a religious profession; one who has severed all attachments; a totally subservient individual; a reprehensible person; a bandit; a criminal; an old person; a child; a single person;[52] an individual of the lowest birth or with impaired organs; someone in distress; an intoxicated or insane person; someone tormented by hunger or thirst, or suffering from fatigue; a lovesick or angry person; and a thief.

For women, women shall give testimony; for the twice-born, twice-born individuals of equal rank; for Shudras, upright Shudras; and for the lowest-born, those of the lowest birth.[53] Anyone who

has personal knowledge may give testimony for litigants when the event has taken place inside a house or in the wilderness, or in a case involving bodily harm. When there is no one else, even a woman, a child, an old man, a pupil, a relative, a slave, or a servant may give testimony.

He should recognize the trembling in the voices of children, old men, and sick persons, as also of individuals with deranged minds, when they give false testimony.

He must not investigate[54] the witnesses in all cases of violence, theft, sexual crimes, and verbal and physical assault. (8.61–72)

[ASSESSING TESTIMONY]

When witnesses are in disagreement, the king should accept the testimony of the majority; when they are equally divided, the testimony of those distinguished by superior qualities; and when men with superior qualities are in disagreement, the testimony of Brahmans.

Testimony is valid when it is based on what the witness himself has seen or heard. When a witness speaks truthfully with respect to that, he does not suffer any loss of merit or wealth. If, in a court of Aryas, a witness says something deceitfully contrary to what he has seen or heard, after death he will plunge headlong into hell and suffer the loss of heaven.

When a person, even though he is not listed as a witness in the plaint, has seen or heard anything pertaining to the trial and is questioned during the trial, he also should testify in accordance with what he saw or heard.

Even one man free from greed may be appointed as a witness, but never women, even if they are many and honest, because the female mind is unsteady; nor even other men tainted with defects.

Only what witnesses testify to in a forthright manner should be accepted as valid in a trial; anything different that they may testify to deceitfully for the sake of dharma has no validity.[55] (8 .73–78)

[QUESTIONING OF WITNESSES]

When the witnesses have gathered in the court, the adjudicator should examine them in the presence of the plaintiff and the defendant, exhorting the witnesses in the following manner:

> What you know about any mutual transaction between these two individuals pertaining to this lawsuit—state all that truthfully, for you are the witnesses in this matter. When a witness speaks the truth during his testimony, he will obtain magnificent worlds, as well as unsurpassing fame here below; such speech is honored by Brahma. When he speaks an untruth during his testimony, he will be bound tightly by the fetters of Varuna and lie helpless for one hundred lifetimes; therefore, he should speak the truth during his testimony. By truth, the witness is purified; by truth, dharma is increased. Witnesses of all social classes, therefore, should speak only the truth. For the self alone is the witness of the self; the self, likewise, is the refuge of the self. Do not disdain your own self, the supreme witness of men. Evildoers undoubtedly think, “No one sees us,” yet gods see them clearly, and so does their own inner self. Heaven, earth, waters, heart, moon, sun, fire, Yama, wind, night, the two twilights, and dharma—these know the conduct of all embodied beings.

In the presence of king and Brahmans[56] and in the forenoon, the adjudicator, after purifying himself, should ask the twice-born individuals, who have purified themselves and are facing the

north or the east, to give truthful testimony. He should question a Brahman, saying, "Speak"; a Kshatriya, saying, "Speak the truth"; a Vaishya, with a reference to cows, seeds, and gold;[57] but a Shudra, with a reference to these sins that cause loss of caste:

> The worlds to which tradition consigns a murderer of a Brahman, a killer of a woman or child, a betrayer of a friend, and an ingrate—those worlds will be yours, if you testify falsely. Whatever good deeds you have done since birth, dear fellow, all that will go to the dogs, if you testify dishonestly. "I am all alone"—should you think like that about yourself, good man, there dwells always in your heart this sage who observes your good and evil deeds! This god, Yama the son of Vivasvat, dwells in your heart. If you have no quarrel with him, then you do not have to go to the Ganges or the Kuru land.[58] Naked, blind, shaven-headed, and racked with hunger and thirst, a man who gives false testimony will have to go to his enemy's house carrying a skull bowl to beg for almsfood. If anyone gives a false answer when questioned at a judicial investigation, in blind darkness that sinner will fall headlong into hell. A person who goes to a court and testifies to what is contrary to the facts or to what he has not seen is like a blind man, eating fish along with the bones. When his discerning inner self remains unperturbed as a man is giving testimony—gods know of no man superior to him in this world. Listen, my friend, to an orderly enumeration of how many relatives of his a man kills when he gives false testimony in a particular case. He kills five by false testimony concerning livestock; ten, by false testimony concerning cows; one hundred, by false testimony concerning horses; and one thousand, by false testimony concerning a human being. He kills the born and yet to be born by giving false testimony concerning gold; and he kills all by false testimony concerning land—never give false testimony concerning land. False testimony concerning water, they say, is similar to that concerning land; the same is true of false testimony concerning the sexual enjoyment of women and concerning all gems, whether they are aquatic or lapidary. After taking careful note of all these evils resulting from false testimony, tell the truth forthrightly just as you saw or heard.

He should treat Brahmans who are cattle herders, traders, artisans, performers, servants, or moneylenders just like Shudras. (8.79–102)

[EXCUSABLE FALSE TESTIMONY]

When a man, even though he knows the truth, gives evidence in lawsuits contrary to the facts for a reason relating to dharma, he does not fall from the heavenly world; that, they say, is divine speech. When telling the truth will result in the execution of a Shudra, Vaishya, Kshatriya, or Brahman, a man may tell a lie; for that is far better than the truth.

Such persons, performing the highest expiation for the sin of false testimony, should offer to the goddess Sarasvati oblations of milk rice dedicated to the goddess of speech. Alternatively, such a person may offer an oblation of ghee in the fire according to rule, reciting the *Kma* formulas, the verse to Varuna: "Untie, Varuna…," or the three formulas addressed to water.[59] (8.103–6)

[FAILURE TO GIVE EVIDENCE]

When a man who is not sick fails to testify for three fortnights in cases pertaining to debts and the like, he becomes liable for the entire debt and is fined one-tenth of the total. (8.107)

[FALSE TESTIMONY]

When an illness, a fire, or the death of a relative is seen to afflict a witness within seven days of his testimony, he should be compelled to pay the debt and a fine. (8.108)

Every case where perjured testimony has been given should be declared a mistrial, and any judgment rendered there should be annulled. Testimony given through greed, delusion, fear, friendship, lust, anger, ignorance, or immaturity is considered false. (8.117–18)

[PUNISHMENT FOR PERJURY]

I will explain in order the specific punishments for a person who gives false testimony for any one of these reasons.

For giving false testimony through greed, he should be fined 1,000 Paas; through delusion, the lowest fine;[60] through fear, double the middle fine; through friendship, four times the lowest fine; through lust, ten times the lowest fine; through anger, three times the highest fine; through ignorance, a full 200 Paas; and through immaturity, just 100 Paas. These are said to be the punishments for false testimony prescribed by the wise in order to prevent the miscarriage of dharma and to arrest adharma.

When individuals of the three classes give false testimony, a righteous king should first fine them and then execute them; a Brahman, on the other hand, should be sent into exile. (8.119–23)

[OATHS]

When two persons are litigating matters for which there are no witnesses, however, and he is unable to discern the truth, he should discover it even by means of an oath. Great sages, as well as gods, have taken oaths to settle a case. Vasistha[61] also made an oath before King Paijavana.

A wise man must not take an oath falsely even with regard to a trifling matter, for by taking an oath falsely, he comes to ruin here and in the hereafter. Taking an oath is not a sin causing loss of caste when it is made in connection with lovers, marriages, fodder for cows, or firewood, or to protect a Brahman.

He should make a Brahman swear by the truth; a Kshatriya by his conveyance and weapons; a Vaishya by his cattle, seeds, and gold; and a Shudra by all the sins causing loss of caste.

Alternatively, he may make the person carry fire, stay submerged in water, or touch separately the heads of his sons and wife. When the blazing fire does not burn a man, the water does not push him up to the surface, and no misfortune quickly strikes him, he should be judged innocent by reason of his oath.[62] Long ago when Vatsa was accused by his younger brother, Fire, the world's spy, did not burn a single hair of his because he told the truth.[63] (8.109–16)

[ENJOYMENT]

When an owner looks on silently as something is being enjoyed by others in his presence for ten years, he is not entitled to recover it. If something is enjoyed within his own locality and he is neither mentally incapacitated nor a minor, he loses any legal right to it; the user is entitled to that property.

Pledges, boundaries, assets of minors, open deposits, sealed deposits, women, and the possessions of the king and of Vedic scholars are never lost on account of enjoyment. (8.147–49)

CHAPTER ELEVEN

The Mature Phase

Jurisprudential scholarship, especially that relating to legal procedure, advanced dramatically during the period of the Gupta empire, beginning roughly in the fourth century C.E. This was also the time when Kautilya's *Treatise on Politics* gained fame and popularity and came to be ascribed to Canakya, the legendary prime minister of Candragupta, the founder of the Maurya Empire and the grandfather of Asoka.[1] This period appears to have been a golden age of jurisprudential scholarship. Of the many texts that may have been produced during this time, only two are preserved in the manuscript tradition, those ascribed to Yajnavalkya and Narada. Only fragments of the two other major texts, those of Brihaspati and Katyayana, which also demonstrate clear advances in legal thought especially with respect to legal procedure, are available in the form of citations in medieval legal digests,[2] some of which will be found in chapter 13.

In spite of the advances made by these authors, they remain indebted to the two scholars who lived several centuries before them: Kautilya and Manu. Many of the texts produced during the Gupta period can be viewed as commentaries on and developments of their legal thought.

11.1 YAJNAVALKYA

(See headnote to ch. 5.1.)

The historical importance of Yajnavalkya's treatise rests principally on its analysis of legal procedure. As I have noted, Yajnavalkya divides his work into three sections, the second of which deals with courts and dispute resolution and is called *vyavahra.*

We notice great progress in his discussion of legal procedure over that of Manu, who preceded Yajnavalkya by two or three centuries. Yajnavalkya had before him two texts, those of Manu and Kautilya. He drew upon both in composing his text, sometimes reproducing their discussions verbatim. But in legal procedure, Yajnavalkya represents an advanced level of jurisprudence; brevity and precision of language characterize his discussions. His fame is also due to a commentary on his work written in the twelfth century by Vijnanesvara, which the British colonial rulers and their courts erroneously thought was "law" in most of India, except for Bengal. As Lingat (1973: 98) observes: "Of all the *smtis* which have come down to us that of Yajnavalkya is assuredly the best composed and appears to be the most homogeneous, even though it may have been made up of elements borrowed from various sources. We are struck, especially if we have just read Manu, by the sober tone, the concise style, and the strictness with which the topics are arranged." This is true especially in his section on legal procedure. In the context of evidence, for example, Yajnavalkya is the first to give prominence to documents and ordeals, using for the first time the technical terms *lekhya* and *divya.*

Yajnavalkya sees the entire legal process of the court, from the initial filing of the complaint

until the court's final verdict, as divided into four steps, which he calls feet (#2). The selections that follow present clear descriptions of these steps, expect perhaps the verdict, which is dealt with cursorily and in the context of an appeal from an unjust court proceeding. There is an expansion of the technical vocabulary noted in Kautilya's *Treatise on Politics.* Here is a sampling:

abhiyoga and *pratyabhiyoga*: accusation or suit, and countersuit
arthin and *pratyarthin*: the plaintiff and defendant
vedita: the initial charges filed with the court
bhvita: proved, convicted
divya: ordeal
hna: defeated in the lawsuit, already mentioned in *MDh* 8.57
kriy: evidence
lekhya: documentary evidence
nihnava: plea of denial
niraya: verdict
pratijñ: the plaint
prativdin: plaintiff and defendant
prvavdin, *prvapaka*: plaintiff, the person who has the burden of proof
prvvedaka: the person filing the charges, plaintiff
sapaa: a suit that involves a stake or wager

As noted earlier (ch. 5.1), the text of Yajnavalkya used here is from my forthcoming critical edition to be published in the Murty Classical Library of India by Harvard University Press. That edition broadly follows the text established by the ninth-century commentator Visvarupa (see ch. 7.2) and follows his numbering of the verses.

1

[THE KING'S ROLE AS JUDGE]

When a king properly punishes those who deserve to be punished and executes those who deserve to be executed, he has performed sacrifices at which choice sacrificial gifts have been given. Reflecting thus on the rewards that are individually equal to those of a sacrifice, a king should try lawsuits by himself every day, surrounded by the assessors. (1.354–55)

When families, castes, guilds, associations, and even provincial groups have lapsed from the dharma proper to them, the king should discipline them and establish them on the right path. (2.34)

2

[CONSTITUTION OF THE COURT]

The king should try lawsuits accompanied by learned Brahmans, in conformity with treatises on dharma and free from anger and greed.

The king should appoint as court officers individuals who possess erudition and Vedic learning, belong to distinguished families, speak the truth, and treat both friend and foe alike. When the king cannot try lawsuits because of the pressure of work, however, he should assign a Brahman who is learned in every facet of dharma, along with assessors.

Assessors who act contrary to texts of recollection or in a similar manner[3] out of love, greed, or

fear should be fined individually a sum equal to twice the amount under litigation. (2.1–4)

[GENERAL RULES OF LEGAL PROCEDURE]

If someone who suffers an injury at the hands of others in a manner contrary to texts of recollection or normative practice reports it to the king, it is indeed a subject of litigation.[4]

In the presence of the defendant, the charge should be written down exactly as reported by the plaintiff, recording the year, month, fortnight, day, name, caste, and the like. After the defendant has heard the plaint, his plea should be written down in the presence of the plaintiff. Immediately thereafter, the plaintiff should have the evidence he will use to prove what is alleged in his plaint written down. If that is successful, he obtains success; the opposite, if it is otherwise.

In litigations, this legal procedure has been shown to have four feet.[5]

Until the accusation has been disposed of, the defendant may not file a counteraccusation against the plaintiff; no one else may file an accusation against the accused; and what has been stated may not be altered. He may, however, file a counteraccusation in cases involving brawls and violence.

From each of the two parties a surety should be secured capable of satisfying the verdict.

When, after a denial, the charge against him has been proven, he should give the sum claimed and an equal amount to the king. A man who files a false accusation should pay twice the sum listed in the accusation.

In cases involving violence,[6] theft, assault, cows, calumny, and an urgent matter,[7] as well as one involving a woman, he should make the defendant enter a plea immediately; in other cases a delay may be allowed as desired.

A person who moves from place to place; who licks the corners of his mouth; whose forehead perspires; whose face changes color; who speaks in a stumbling and stuttering manner; whose speech is inconsistent and rambling; who is unresponsive when spoken to or looked at; who bites his lips; and who displays a change in his natural condition through acts of mind, speech, and body—in filing an accusation or giving testimony, such a person is declared to be deceitful.

When someone seeks to prove a doubtful legal matter independently,[8] absconds, or does not say anything when he is summoned, he is said to be both defeated and subject to punishment.

When witnesses are available for both parties, the witnesses of the appellant are to be deposed first; but if the plaintiff's claim has been superseded, then the witnesses of the respondent.[9]

If the litigation includes a wager, then the court should make the defeated party pay both the fine and the wager, as well as return the sum claimed to the creditor.[10]

Discarding subterfuge,[11] the king should conduct judicial proceedings in accordance with the facts; for even what is factual that is not properly presented may suffer defeat through a judicial proceeding.

In case someone denies a written plaint containing several parts and the plaint is later proven with regard to one of its parts, the king should make him pay all the claims; he may not, however, recover a claim not recorded in the plaint.[12] (2.5–20)

3

[RULES OF EVIDENCE]

When there is conflict with a text of recollection, however, an edict has greater force within the context of legal procedure, and a treatise on dharma has greater force than a treatise on politics—that is the rule.[13]

Document, enjoyment,[14] and witnesses, it is declared, constitute evidence; and, in the absence of any one of these, one of the ordeals.

In all litigations,[15] evidence relating to a later transaction has greater force; in the case of a pledge, gift, or purchase, however, evidence relating to an earlier transaction has greater force.[16]

When a man looks on without speaking up while his land is being enjoyed by someone else, he loses his title to it in twenty years; in the case of movable property,[17] in ten years—with the exception of a pledge, a boundary, an open deposit, and the property of the mentally incompetent and children, as well as a sealed deposit and the property of the king, women, and Vedic scholars. A man who purloins a pledge and so forth[18] should indeed be made to give the property to the owner and to the king a fine equal to its value or proportionate to his ability.

Title is more authoritative than enjoyment, except when it has come down through successive generations. Even title has no force at all in the absence of even a modicum of enjoyment. When a man who has drawn up the title is sued, however, he should produce it; but not his son or his son's son—in that case, enjoyment has greater force. Enjoyment constitutes probative evidence when there is clear title; enjoyment without a clear title does not represent probative evidence. If the person sued happens to die, his heir should produce it—in that case, enjoyment is no proof when it has been carried out without proper title. (2.21–30)

[GRADATION OF LAW COURTS]

The king, officials authorized to adjudicate lawsuits, associations, guilds, and families—of these, each preceding one should be recognized as having greater authority with respect to legal proceedings among men. (2.31)

[VALIDITY OF LAWSUITS]

He should annul legal actions[19] carried out by force or fraud, as also those executed by women, at night, within a house, outside,[20] or by an enemy. A legal action carried out by someone who is intoxicated, insane, afflicted, in distress, a child, or frightened, as well as one executed by a person unrelated to the issue, is invalid. (2.32–33)

[RULES REGARDING A SURETY]

Brothers, husband and wife, and father and son—their ability to act as surety[21] for each other, to incur debts from each other, or to be witnesses for each other is not recognized as long as they remain undivided coparceners.

The law enjoins a surety for appearance, for trustworthiness, and for payment.[22] In case of deceit, however, the first two should be made to pay, and even the sons of the third. When a surety for appearance or even a surety for trustworthiness dies, his sons are not obliged to pay the debt, whereas the sons of one who stands as surety for payment are obliged to pay.

If there are several sureties, then each should repay the loan proportionate to his share; when they have assumed individual liability for the whole debt, according to the wishes of the creditor.[23]

When a surety has been forced to repay the loan publicly to a creditor, the debtors are obligated to pay the surety twice the amount of that loan. Also to be returned are women and domestic animals along with their offspring; three times the amount of grain; four times the amount of clothes; and eight times the amount of liquids. (2.54–59)

[PEOPLE QUALIFIED TO BE WITNESSES]

Individuals who are given to ascetic toil and inclined to gift giving, come from distinguished families, speak the truth, place dharma at the forefront, are upright, have sons, own property—a

minimum of three such individuals who delight in rites associated with the five sacrifices are recognized as witnesses, each with respect to persons of the same caste or class, or else all with respect to persons of all castes and classes.

A woman; child; old person; gambler; drunkard; mad person; heinous sinner; actor; person belonging to a heretical sect; forger; individual with impaired organs; person fallen from caste, close to the litigants, or with a stake in the lawsuit; associate or enemy of the litigants; thief; violent individual; person of ill repute; and an extreme ascetic[24]—these are not qualified to be witnesses.

When approved by both parties, even a single person who knows dharma is qualified to be a witness. Anyone is qualified to be a witness in cases relating to sexual crimes and to theft, assault, and violence. (2.70–74)

[FAILURE TO TESTIFY]

When a man fails to give testimony, on the forty-sixth day the king should force him to pay the entire debt along with a penalty of one-tenth the amount. That vilest of men who, although he knows the facts, does not provide testimony is equal to false witnesses with respect to both the sin and the punishment. (2.75–76)

[TESTIMONY OF WITNESSES]

When the witnesses have come into the presence of the plaintiff and defendant, he should make them give testimony, saying:

> The worlds that await those who commit sins causing loss of caste, as well as those who commit the grave sins causing loss of caste; the worlds that await arsonists and slayers of women and children—all those worlds will a man obtain who gives false testimony. Whatever good deed you have performed over hundreds of lifetimes, all that, you should know, will go to the man whom you defeat by your false testimony. (2.77–79)

[ASSESSING THE TESTIMONY]

When witnesses are in disagreement, the statement of the majority should be accepted; when they are equally divided, the statement of quality witnesses; when the quality witnesses are in disagreement, the statement supported by those with superior qualities.

The person whose plaint the witnesses affirm to be true is the victor, whereas when they state otherwise, that person suffers certain defeat. Even after the witnesses have given their testimony, if other witnesses with superior qualities or double the original number state otherwise, then the earlier witness are deemed false. (2.80–82)

[FALSE WITNESSES]

The person who suborned perjury, as well as the witnesses, should be fined individually twice the amount under litigation; if it is a Brahman, he should be sent into exile. When a person who has been produced to give testimony by either party, engulfed by delusion, disavows it, he should be made to pay eight times the amount; a Brahman, however, should be sent into exile.

One may clearly give false testimony in a case where a person of an upper class is subject to execution. To expiate that, twice-born individuals should offer an oblation of milk rice dedicated to Sarasvati, the goddess of speech. (2.83–85)

[DOCUMENTS]

When any transaction has been concluded by mutual agreement, however, a document with witnesses should be executed with regard to it, noting at the beginning the name of the creditor, and inscribed with the year, month, fortnight, day, residence, caste, and lineage, as well as with one's Vedic affiliation[25] and the name of one's father.

Once the transaction has been completed, the debtor should write his name in his own hand: "I, the son of NN, agree to what has been written above in this document." The witnesses—who must be uneven in number[26]—should also write in their own hand: "I, NN, am a witness to this document," preceded by the names of their fathers. Should the debtor be illiterate, however, he should have his view written down, as also an illiterate witness through another witness in the presence of all the witnesses. Thereafter, the scribe should write at the end: "At the request of both parties, I, NN, the son of NN, have written this."

When a document has been written in one's own hand, however, all that is authoritative even without witnesses, texts of recollection declare, except when it is done through force or fraud.

A debt attested by a document, however, has to be repaid by three generations,[27] while a pledge may be made use of so long as the debt remains unpaid.[28]

When a document is located in another country, badly written, lost, erased, stolen, cut, torn, or burned, he should get another one executed.

In order to authenticate a dubious document, one should look at a writing sample from the man's own hand or resort to reasoning, implication, evidence, peculiar marks, connection, title, and inference.[29]

He should write on the back of the document any payment received from the debtor. Alternatively, the creditor should give a receipt signed in his own hand. After paying back the debt, he should tear up the document; or he should have another executed as acquittance.

A debt contracted in the presence of witnesses should be repaid also in the presence of witnesses. (2.86–97)

[ORDEALS]

Balance, fire, water, poison, and holy water are the ordeals given here for establishing innocence. They are employed in cases of serious accusations when the accuser has accepted to be subject to punishment. Or, either of the parties, if they so wish, may undergo it, while the other accepts to be subject to punishment. One must undergo it even without the acceptance to be subject to punishment in cases involving treason against the king or a sin causing loss of caste.

When the amount is less than one thousand,[30] the plowshare ordeal[31] should not be employed, nor the ordeals of balance or poison. In accusations involving royal property, people should always undergo them after they have purified themselves. In a case amounting to one thousand, one should employ the balance and so forth, while holy water may be used for even a small amount. A person judged innocent should be made to pay fifty, while a person who is guilty is subject to punishment.

He should summon at sunrise the man who has fasted and taken a bath with his clothes on, and make him undergo any of the ordeals in the presence of the king and Brahmans: the balance ordeal for women, children, the elderly, the afflicted, cripples, Brahmans, and the sick; the fire and the water ordeals for a non-Shudra; and seven grains of poison for a Shudra.[32]

[Balance]

Individuals skilled in the use of balances should place the accused in the balance, make the balance even by using weights, mark lines,[33] and take him down.

"You, O Balance, are the abode of truth formerly created by the gods. Therefore, Lovely One, speak the truth! Free me from suspicion. If I have committed the crime, O Mother, then push me down. If I am innocent, raise me up." So should he address the balance.

[Fire]

He should mark both hands after they have been rubbed with unhusked rice, then place on them seven pipal leaves and bind with a string, wrapping around the same number of times.

"You alone, O Purifier, move about in the interior of all beings. Like a witness, O Sage, speak the truth about my good and evil deeds."

After the person has said this, he should quickly place in both his hands a smooth red-hot iron ball weighing 50 *palas* (1.89 kg). Taking it, he should walk slowly across all seven circles. One should know that each circle has a diameter of 16 *agulas* (32 cm), with the same distance between any two of them.

After he has released the fiery ball and rubbed his hands with unhusked rice, if one finds that he is not burned, he should be judged innocent. If the ball falls along the way or if there is a doubt,[34] he should carry it again.

[Water]

After beseeching water: "Protect me by truth, O Varuna," he should submerge himself, holding on to the thighs of a man standing in water reaching up to his navel. At the very same time, when the other runner has gone, a fast runner should bring back the arrow that had been discharged. If the latter sees the man with his whole body submerged, then he should be judged innocent.[35]

[Poison]

"You, O Poison, O son of Brahman, You who abide in the true dharma, rescue me from this accusation. By truth become my ambrosia."

Having said that, he should consume the *rga*[36] poison originating in the Himalayas. Should he digest it without violent symptoms,[37] one should proclaim the man's innocence.

[Holy Water]

After worshiping the fierce deities, he should bring their bath water. After instructing the man,[38] he should get him to drink three handfuls of that water. When the man does not suffer a severe calamity caused by the king or by an act of god until the fourteenth day, he is innocent without a doubt. (2.98–117)

[WRONGFUL VERDICT AND APPEAL]

After subjecting a lawsuit that has been wrongly tried to a new trial, the king should punish individually the assessors along with the victorious party with a fine that is twice the amount in dispute.

When a man thinks, "I am not defeated," although he has been clearly defeated according to proper procedure, and he returns and is defeated again, he should be made to pay a double fine. (2.308–9)

11.2 NARADA (FIFTH–SIXTH CENTURY C.E.)

The treatise ascribed to Narada is unique in the history of the literature on dharma. All others prior to his contain discussions of the entire spectrum of topics relating to dharma, as evidenced most clearly in Yajnavalkya, who divided his text into three chapters dealing with the three major provinces of dharma: proper conduct (*cra*), law and legal procedure (*vyavahra*), and expiation (*pryacitta*). Narada's work is a legal code in the strict sense; he deals only with legal procedure (*vyavahra*). Given that two authors who followed him, Brihaspati and Katyayana, whose works are now lost, may have also written specialized texts on legal procedure, it is possible that the literary tradition of dharma may have begun to produce texts specializing in law proper around the middle of the first millennium C.E. They would parallel the specialized legal digests (*nibandha*) that began to be produced in the first half of the second millennium C.E.

Narada's dates are impossible to determine with any certainty, but a time not too distant from that of Yajnavalkya seems reasonable.[39] Although the evidence has been interpreted differently, I think the preponderance, especially the technically sophisticated legal vocabulary, points to a date for Narada somewhat later than Yajnavalkya. Tentatively, then, I have assigned him to the fifth–sixth century C.E.

The dependence of Narada on Manu is clear, and the tradition itself calls his work a recension of Manu's text. Yet the precision of language and the brevity of expressions show the great progress in legal thinking and composition that separates the two jurists. Early European scholars of India saw a parallel between Narada's composition and Roman legal texts. A. Barth observed as early as 1876: "If we except the monuments of Roman legislation, antiquity has not perhaps left us anything which is so strictly juridical."[40] Narada's quest for precision and organizational structure is evident in the introductory chapter called *vyavahramtk,* general topics of legal procedure; Narada is the first to introduce such a section into a legal text.

Although Narada has a long section on witnesses, it is clear that during his time documents had become the most significant form of evidence in legal proceedings. He places documents ahead of witnesses in discussing evidence, something that even Yajnavalkya, who has an extensive discussion of documents, did not do. For Narada documentary evidence is superior, as he states explicitly: "(The judge) may overrule a document only on the basis of another document, and what is attested to by witnesses, on the basis of other witnesses; whereas he may overrule witnesses on the basis of a document, given that a document is superior to witnesses" (*NSm* 1.125).

Some scholars have suggested that Narada's text was meant for specialists—judges and jurists.[41] Many statements in his work appear to bear this out. One is his realistic view of the possibility that witnesses may be bribed or intimidated by one of the parties to a litigation so that they will give false testimony. He gives this warning: "A man should not secretly visit a witness designated by the opponent, and he should not alienate him from the other. Should he do so, he will lose the case" (*NSm* 1.147).

Narada is also the first to set time limits on various kinds of evidence that may be presented in court (see *NSm* 1.149–53). He permits indirect evidence, what is today called "hearsay" evidence. So if a prospective witness dies or is otherwise unavailable, then a person who has heard him state what he saw or heard may present that evidence to the court (*NSm* 1.148).

His understanding of the epistemology of law or dharma is revealed in his extensive comments on the norms prevailing in particular localities. He appears to take for granted the multiplicity of laws and sources of law.

[Principles of Jurisprudence]

When men were totally fixed on dharma and spoke the truth, there were no lawsuits,[42] and no hatred or envy. Once dharma vanished among human beings, lawsuits came into being; and the king, the bearer of the rod, was made the adjudicator of lawsuits.

In that regard, two procedures have been declared for clearing up a doubtful case between two litigants: with documents and with witnesses.

One should know that there are two kinds of lawsuits: with an additional wager[43] and without an additional wager. When there is an extra wager stipulated in writing, it is one with an additional wager. In a suit that includes an additional wager, of the two parties, the one who loses should be made to pay the wager he has made and also the fine for defeat.

The core of legal procedures is said to be the plaint. When it fails, the plaintiff loses, and when he carries it through, he prevails.

Families, guilds, companies, an appointed official, and the king are the venues for judicial proceedings; each following one has greater authority than the preceding.

A legal procedure, it is said, has four feet, four bases, and four means; it benefits four, extends to four, and produces four.

It has eight limbs, eighteen feet,[44] one hundred branches, three wombs, two kinds of accusation, two gates, and two paths.

Dharma, legal procedure, custom, and king's decree—these are the four feet of legal procedure, the subsequent ones annulling the prior ones.[45] Of these, dharma is based on truth, legal procedure on witnesses, custom on what is recorded in books,[46] and a decree is the king's command. It is said to have four means because it is to be achieved by the expedients, beginning with conciliation.[47] Because it protects the four orders of life, it benefits four. It is said to extend to four because it extends in quarters to the perpetrators, witnesses, assessors, and the king.[48] Because it produces dharma, success, fame, and attachment of the people, it is said to produce four.

The king along with his officials, assessors, authoritative treatise,[49] accountant, scribe, gold, fire, and water are said to be its eight limbs. Nonpayment of debts, deposits, partnerships, resumption of a gift, breach of contract for service, nonpayment of wages, sale without ownership, nondelivery after sale, cancellation of a purchase, nonobservance of conventions, land disputes, relations between a man and woman, partition of inheritance, violence, verbal assault, physical assault, gambling, and miscellaneous—these, texts of recollection declare, are the eighteen feet. Another subdivision of these same, texts of recollection declare, amounts to 108. Because the activities[50] of human beings vary widely, it is said to have 100 branches. Because it originates from lust, hatred, and greed, it is said to have three wombs. These three generate legal disputes. A lawsuit, however, should be recognized as having two kinds of accusations: an accusation based on suspicion and an accusation based on fact. Suspicion comes from association with bad people, and fact from finding such things as stolen goods. Because the lawsuit is connected with two sides, it is said to have two gates. Of these, the initial charge is one side, and the plea to it is the opposing side. Because it follows fact or subterfuge, it is said to have two paths. What is based on truth is fact, while what is stated erroneously is subterfuge. The king, who is the instrument for implementing dharma, should dismiss a sophisticated subterfuge; he should embrace only the facts, because his prosperity is rooted in dharma. (*M* 1.1–25)

[Court Proceedings]

In a self-disciplined king who adjudicates lawsuits in accordance with dharma there arise seven qualities, just like the seven flames of a fire:[51] dharma, success, fame, affection of the people, support, respect of his subjects, and eternal residence in heaven.

Therefore, having reached the seat of dharma, the king, free from envy and carrying out the vow of Vaivasvata,[52] should be impartial toward all beings. Placing the treatise on dharma at the forefront, abiding by the view of the adjudicator, and with a collected mind, he should hear lawsuits in the proper order.

The hearing has four parts: arrival,[53] the subject of litigation, inquiry, and verdict.

Investigating through paths that do not conflict with treatises on dharma and success, he should skillfully steer the course of the lawsuit. As a hunter steers to the location of a deer that has been pierced by following the trace of blood in the brush, so should he steer to the location of dharma.

Where there is a conflict between a treatise on dharma and a treatise on politics, he should discard what is prescribed by the treatise on politics and follow what is prescribed by the treatise on dharma. When there is a conflict among treatises on dharma, worldly convention consistent with reason has greater force than dharma; it overturns dharma. For Lord Dharma is subtle, indiscernible, and difficult to fathom. Therefore, he should steer the course of the lawsuit along the discernible path. Even a nonthief may be turned into a thief, and a thief into a nonthief; Mandavya, who was not a thief, was convicted of being a thief through legal procedure.[54]

Among women, at night, outside the village, inside a house, and between enemies— a legal transaction between these, even when done, should be subject to being redone.[55] (*M* 1.26–37)

[Delay in Court Proceedings]

Because of the intricate nature of disputes and also because of the debility of memory, in cases about debt and the like, he may at his discretion grant a delay with the desire to ascertain the facts. In cases involving cows, land, gold, women, theft, assault, and an emergency, as also violence and accusations involving great crimes, he should proceed with the case immediately.[56] (*M* 1.38–39)

[Summons and Detention of the Accused]

When someone proceeds with a doubtful case without filing charges with the king, however, he is subject to a harsh punishment, and his case will not succeed.

When a man does not make himself available as a case against him is about to be filed, or when he brushes off the plaintiff's directive, the latter may place him under legal detention until the court summons have been conveyed. Legal detention is of four kinds: in a particular place, for a particular length of time, with respect to travel abroad, and with respect to a particular activity. A man placed under legal detention shall not defy it.

While crossing a river, in a wild tract, in a dangerous region, and during turmoil— someone placed under legal detention in circumstances such as these does not commit a crime by violating that legal detention executed by a foe. When a man placed under legal detention at the proper time for legal detention violates it, he should be fined; whereas a man placing someone under legal detention in a wrongful manner should be punished.[57]

Someone planning to get married, afflicted with a sickness, preparing to offer a sacrifice, or struck by a calamity; someone sued by another person or occupied with royal business; cowherds while looking after cows, farmers while harvesting the crop, craftsmen while engaged in their work, and soldiers during hostilities; someone who has not reached the age for legal transactions;[58] an

envoy; someone about to make a gift, engaged in carrying out a vow, or in a difficult situation—such a person shall not be placed under legal detention, and the king should not issue a judicial summons to him.

The accused shall not file a counteraccusation against his accuser unless he has disposed of that lawsuit, nor shall someone file an accusation against a man already accused by another—it is not proper to shoot at one already shot.[59] (*M* 1.40–48)

[Filing the Plaint]

Once an accusation has been filed, he must neither introduce changes to it nor present a totally different plaint—when he presents it, he loses the original suit.

One must not file a false accusation. One who files a false accusation becomes guilty. The fine prescribed for such as accusation falls on the man filing it. (*M* 1.49–50)

[Actions Causing Loss of Suit]

Procrastinating with some excuse or another, refusing to speak in court, and after making a statement denying it: these are the marks of a man who is losing a case. When someone flees after he receives the summons or, having arrived, refuses to participate in the court proceeding, the king should fine him; and, indeed, he loses the case. (*M* 1.51–52)

[Verdict]

Once lawsuits have been settled, evidentiary proof, whether it is a document or a witness, becomes fruitless unless it was already recorded when the charges were filed.[60] As an excellent rainy season is fruitless once the crops have ripened, so evidentiary proof is fruitless for settled lawsuits.

Even a nonfactual statement, when made at the right time, is subject to judicial examination, whereas even a factual statement that is not presented through negligence is disallowed. When someone thinks that a case has been adjudicated and a verdict rendered[61] in a manner contrary to dharma, he may stipulate a double fine and have the case retried.

When a lawsuit has been improperly tried, however, the assessors should be subjected to that punishment, for without punishment no one would ever remain on the right path. If he speaks falsely because of passion, ignorance, or greed, that assessor should be known as a nonassessor,[62] and the king should punish him harshly. (*M* 1.53–58)

[Judicial Examination]

Nonetheless, a king, carrying out his own dharma, should in a special way examine whether something is correct or incorrect, because people's intentions are so diverse. There are men who give false testimony because of greed, and there are other evil-minded people who manufacture fake documents. Therefore, the king should examine in a special way both of these: documents by means of the customary norms for documents, and witnesses by means of the customary norms for witnesses.

Liars give the appearance of being truthful, while truthful persons look like liars: we see diverse dispositions. Therefore, it is right to subject them to examination. The sky looks like flat land and a

firefly like fire; but there is no flat land in the sky and no fire in a firefly. Therefore, it is right to examine even a thing that is seen with one's own eyes. By pronouncing on matters after examination, he will not violate dharma.

When a king, self-possessed, always tries lawsuits in that manner, he will spread his blazing fame wide in this world and reach the crest of the sun. (*M* 1.59–65)

2

[ASSESSMENT OF EVIDENCE]

Document, witnesses, and enjoyment: texts of recollection present these as the three kinds of proof by which a creditor obtains his property when it has been appropriated by someone. A document is always strong; witnesses, however, only as long as they are alive; enjoyment after the passage of time. That is the judgment of authoritative texts. (1.65–66)

[Enjoyment]

Of the three kinds of proof that have been given in due order, one should recognize that each preceding one is stronger; enjoyment is stronger than these.[63] Even when a document is available and the witnesses are alive, what has not been enjoyed is not firmly established, especially in the case of immovable property.

When a man, through his own folly, looks on passively as his things are being enjoyed by others under his very eyes and while he is still living, that enjoyment places those things in the others' power. When a property owner looks on passively without saying anything as something is being enjoyed in his presence by others for ten years, he has no right to take it back.[64] When he has remained indifferent and stood there silent, after the time given above has elapsed his lawsuit will not succeed. If the man is not mentally incompetent or a minor and the property is being enjoyed in his presence, then it has been enjoyed legitimately and the man who enjoyed it is entitled to that property.

Pledge, boundary, property of a child, open and sealed deposits, women, property of the king, and property of a Vedic scholar—these are not lost through enjoyment. Through the complete enjoyment in the presence of the owner for twelve years, moreover, even a pledge and so forth are lost, with the exception of women and the property of the king. A woman and the property of the king are never lost even if they are enjoyed for hundreds of years without title.[65]

Where one detects enjoyment but no title at all, there title is the proof and not enjoyment. When something is enjoyed without title, that enjoyment does not undermine its ownership, but when the one who enjoyed the property dies, it may be enjoyed by his heirs. When the very man who took the articles is being sued, he should produce the title to them. Enjoyment alone is successful for those who inherited them in the proper order from their father. Consignment, stolen property, deposit, what is seized by force, what is borrowed, and what is enjoyed outside the owner's presence— for these six, enjoyment is no proof without title.[66] Likewise, when a litigant dies while he is being sued, his son should prove the case; enjoyment does not extend to this.[67]

When something has been enjoyed even without title for over three previous generations, that property, which has come down three generations in the proper order, cannot be expropriated. (1.67–81)

[Documents]

Documents should be recognized as consisting of two kinds: a document written in one's own hand and a document written by someone else; and one that is witnessed and one that is not witnessed. The legitimacy of these two depends on the settled practice of the region. A document, texts of recollection declare, is valid when it does not contravene the practice of the region and is marked by a clear statement of the issues in question, and its sequence and letters are unbroken.[68] A document executed by someone who is intoxicated or facing a legal accusation, by a woman or child, or by force is invalid, as also one executed by intimidation or deception. A document is also worthless when its witnesses, creditor, debtor, and scribe have died, unless the pledge is firmly in place. Such a pledge is said to be twofold: mobile and immobile. Both these are valid only if they are being enjoyed, not otherwise. A document that has been shown time and again and publicly heard repeatedly remains valid under all circumstances, even when the witnesses are dead. A document whose content has never been heard or seen before has no validity with respect to a lawsuit even if the witnesses are alive. In the case of a document that has been deposited in another country, burned, written badly, or stolen, if it is still existent a delay may be granted, and if it is not existent one may present someone who has seen it.

If there is any doubt about the authenticity of a document, he should remove that doubt by looking at the handwriting, and by evidence, marks, implication, and reasoning. A document, furthermore, that bears someone else's name and has been executed for a different purpose—if it is suspect—should be examined using connection, title, and inference.[69]

He may invalidate a document only on the basis of another document, and what is attested to by witnesses, on the basis of other witnesses; whereas he may invalidate witnesses on the basis of a document, given that a document is superior to witnesses.

When documents are cut, torn, stolen, erased, lost, or badly written, another document should be executed.

These are the rules for documents. (1.115–26)

[Witnesses]

When two people are engaged in a legal dispute with regard to matters that are uncertain, however, the way to bring clarity to them is through witnesses, because they have seen, heard, or experienced first hand.

Someone is called a witness because he witnessed something directly with his own eyes or ears—with his ears what another says, and with his eyes a bodily act. Wise men have identified eleven kinds of witnesses. Of these, five kinds are said to be appointed and six kinds non appointed.[70] A witness inscribed in a document, a witness who is made to remember,[71] a casual witness, a secret witness, and an indirect witness:[72] these, texts of recollection declare, are the five kinds of witnesses. The six kinds of non appointed witnesses also have been enumerated by sages: villager, adjudicator, and king linked to the litigants; someone intimately involved with the matters at hand; someone assigned by the plaintiff; and a family with respect to family disputes—these also may become witnesses.

Witnesses should come from good families; be upright; be pure with respect to birth, actions, and wealth; consist of a minimum of three; and be irreproachable, honest, and intelligent. Brahmans, Kshatriyas, and Vaishyas, as also those Shudras who are irreproachable, should act as witnesses for their respective social class; or else, all may be witnesses for all social classes. Members of guilds are to be witnesses for guilds, members of social groups for their respective groups, outcastes for outcastes, and women for women. If some member of a social group such as a guild becomes the object of hatred, then none of them can act as a witness; they all bear hatred toward him.[73]

In treatises, wise men have stated that those disqualified from being witnesses are also of five kinds: because of an explicit statement, because of a fault, because of conflict, because someone

speaks on his own, and when death has intervened. Because of an explicit statement—learned Brahmans and the like; because of a fault—thieves and the like; because of conflict—when in a legal dispute there is disagreement between witnesses; because someone speaks on his own—a person who, without being designated, comes on his own and speaks; someone after death has intervened—upon the death of the plaintiff, except when he told someone his testimony as he was about to die. Learned Brahmans, ascetics, the elderly, and men who have become renouncers—these are disqualified from being witnesses because of an explicit statement; no reason for this has been given. Thieves, violent men, men with a hot temper, gamblers, and killers[74] are disqualified from being witnesses because they are evil; truth is not found in them. When the king has assembled witnesses to decide a single case, if their statements are in conflict, then they are disqualified from being witnesses because of conflict.[75] When a person who, although he has not been designated as a witness, nevertheless comes on his own and speaks, he has been called an informant in the treatises; he does not deserve to be a witness. When there is no plaintiff in a case in which witnesses are to testify, how can testimony be given? Such is a person disqualified from being a witness when death has intervened.

When there are two litigants in a case and both have witnesses, then the plaintiff's witnesses should be questioned first. In a case where, by its very force, the plaintiff's claim has been superseded, the witnesses of the defendant should be questioned.[76]

A man should not secretly visit a witness designated by the opponent, and he should not alienate him from the other. Should he do so, he will lose the case.

If a designated witness dies or goes to another country, those who have heard him can provide valid testimony, for evidentiary proof by indirect means is valid. (1.127–48)

[Time Limits for Different Kinds of Evidence]

A document remains valid even after a very long time. A literate man should write it himself, but an illiterate man should get it written. The testimony of a witness who has been made to remember[77] is said to remain valid here for eight years, while that of a casual witness remains valid for five years. The testimony of a secret witness, likewise, remains valid for three years, while that of an indirect witness, they say, remains valid for just one year. Alternatively, a time restriction has not been indicated with respect to witnesses, for people knowledgeable about authoritative treatises say that the validity of a witness is dependent on his memory. When a man's memory and hearing have never been impaired, he is entitled to provide testimony as a witness even after a very long time. (1.149–53)

[Lawsuits Without Witnesses]

Six other disputes, however, have been acknowledged whose resolution does not require witnesses. Wise men say that the role of witnesses in them is played simply by telltale signs.

Someone carrying a firebrand should be recognized as an arsonist; someone carrying a weapon as a murderer; and someone caught tête-à-tête as an adulterer. Someone carrying a spade close by should be recognized as a breaker of a dike. Someone carrying an ax, likewise, has been declared to be a forest cutter. A man displaying fresh marks should be recognized as one who has committed physical assault.

These are the ones whose resolution does not require witnesses. In the case of assault, however, there must be an investigation. Someone, after he has made a mark on himself, may assault another man out of hatred. In this case, it is proper to carry out an investigation through reasoning, motive, congruity, and ability. (1.154–58)

[Qualifications of Witnesses]

Individuals who have a stake in the suit; individuals close to the litigants; their associates and enemies; individuals with a criminal record; the very sick; and men of ill repute—these must not be called as witnesses. A slave; a fraud; an unbeliever; an old person; a woman; a child; an oil presser; someone who is drunk, insane, scatterbrained, or afflicted; a gambler; someone who officiates as a priest for a group of people; someone who has traveled a long distance; a seafaring trader; a renouncer; a sick person; a hunter;[78] a learned Brahman; someone who is devoid of good conduct or is impotent; a performer; a heretic; a nonobservant;[79] someone who has abandoned his wife or sacred fire; someone who officiates at the sacrifice of people for whom one is forbidden to officiate; someone who shares meals with a litigant; an associate; an enemy; a spy; a relative; a uterine sibling; a convicted criminal; an actor; someone making a living from poison; a snake catcher; a poisoner; an arsonist; a plowman;[80] a son of a Shudra wife; someone who has committed a lesser sin causing loss of caste; someone who is weary, violent, fatigued, poor, very lowborn, or of evil conduct; a student who has not returned home after completing his studies; an imbecile; a dealer in oil; a dealer in roots;[81] someone who is possessed by a spirit, hates the king, or forecasts the weather; an astrologer; a defamer; someone who sells himself or has a missing limb; a pimp; someone with bad nails, black teeth, or leukoderma; someone who betrays his friends; a cheat; a liquor merchant; a magician; someone who is greedy or cruel; someone who quarrels with a guild or association; a butcher; a painter; a religious panhandler; an outcaste; a forger; a trickster; an apostate renouncer; a thief; an officer of the king; a Brahman who sells human beings, poison, weapons, water, salt, bread, or vegetables; a twice-born person who is a moneylender; someone who has fallen from the dharma proper to him; a headman; a panegyrist; someone who serves low-class people, litigates with his father, or causes dissension— these are people disqualified from being witnesses.

Even those, beginning with slave and cheat, who have been designated as disqualified from being witnesses may be called as witnesses, taking into account the gravity of the lawsuit.

In all cases involving violence, theft, and adultery, as well as in both kinds of assault,[82] he should not investigate the qualifications of witnesses. Even in these cases, a child, a single individual, a woman, a forger, a relative, or an enemy should not be a witness; they may give false testimony. A child may give false testimony because of ignorance; a woman because of her lack of truthfulness; a forger because of habitual degeneracy; a relative because of love; and an enemy because of inimical revenge. Alternatively, even though disqualified from being a witness, a single individual may be questioned as a witness in a court so long as both litigants give their consent. (1.159–74)

[Wrong Behavior on the Part of Witnesses]

When a witness, because he is devastated on account of his own iniquity, appears as if sick, moves from place to place, runs pleadingly to everyone, coughs impolitely and without reason, sighs constantly, scratches the ground with his feet, and shakes his arms and clothes; when the color of his face changes, his forehead sweats, and his lips become parched; when he looks up and from side to side and makes a lengthy and rambling speech without being questioned and as if in a hurry—such a man should be recognized as a false witness. The king should punish that evil man.

When someone, after he has disclosed his testimony to others, denies that testimony, he should be punished even more severely, for his crime is greater than that of a false witness. (1.175–79)

[Swearing in of Witnesses]

Having summoned all the witnesses, who are men of proven good conduct and conversant with the

lawsuit, he should question them separately. He should make a Brahman swear by the truth; a Kshatriya by his conveyance and weapons; a Vaishya by his cattle, seeds, and gold; and a Shudra by all the sins causing loss of caste—instilling deep fear in the witnesses through ancient dharma proclamations that extoll the greatness of truth and denounce falsehood.

Naked, shaven-headed, wretched, and racked with hunger and thirst, a man will have to go to his enemy's house carrying a skull bowl to beg for almsfood—should he give false testimony. Barred from the city and remaining famished outside the gate, a man will see mostly his enemies—should he give false testimony. The kind of night that a superseded wife spends, or a man defeated at dice, or a man with his body crushed by a heavy weight—such a night will a man who attests falsely spend.

When a witness, while giving testimony, vacillates like the flapping of a cow's ear, he binds himself with a thousand fetters of Varuna. He is released from one fetter after the completion of one hundred years. In this way, he is freed from that bondage after one hundred thousand years.

Listen, my friend, to an orderly enumeration of how many relatives of his a man kills when he gives false testimony in a particular case. He kills five by false testimony concerning livestock; ten, by false testimony concerning cows; one hundred, by false testimony concerning horses; and one thousand, by false testimony concerning a human being. He kills the born and yet to be born by giving false testimony concerning gold; and he kills all by false testimony concerning land—never give false testimony concerning land.

One only, they say—there is no second—purifies the self. It is truth, the stairway to heaven, like a ship taking one to the farther shore. A thousand horse sacrifices and truth were weighed in a balance. Truth did, indeed, surpass the thousand horse sacrifices. A reservoir is better than a hundred wells; a sacrifice is better than a hundred reservoirs; a son is better than a hundred sacrifices; and truth is better than a hundred sons. By truth the earth gives support, by truth the sun rises, by truth the wind blows, and by truth the waters flow. Truth alone is the highest gift, truth alone is the highest austerity, and truth alone is the highest dharma for people—so have we heard from sacred scriptures. In brief, gods are truth, while humans are untruth— so state the texts of recollection. When a man's mind abides in truth, he attains the divine state in this very world. Give up untruth and speak the truth; by truth you will go to heaven. By speaking an untruth, a man falls into the most dreadful hell.

In hells, moreover, the cruel and powerful servants of Yama will ceaselessly tear out your tongue and hack you with swords. Full of rage, they will pierce you with spears as you cry out helplessly. After tossing you up upside down, they will fling you into pools of fire. And after enduring these dreadful tortures of hell for a long time, you will return here into the horrid wombs of vultures, crows, and the like.

Knowing these evils of untruth and the fine attributes of truth, speak the truth— raise yourself up and do not cause your own downfall. Relatives, friends, and even great wealth—none of them is able to rescue you when you are plunged in dreadful darkness. Your ancestors, however, hang in suspense when you have come as a witness: "Will he rescue us? Or will he cause his own downfall?" Truth is the self of a human being, and the whole universe is founded on truth. In every way you will, by yourself, yoke yourself to the highest good.

The night that you were born and the night that you will die—all that is between those two will be fruitless for you, if you misrepresent the truth. There is no dharma greater than truth, and there is no sin greater than untruth, especially within the dharma of witnesses. Therefore, speak only the truth.

That lowest man who would assail his own speech for the sake of someone else, what would that evil man, without fear of hell, not do for his own sake? Lawsuits[83] are, indeed, established in speech, are rooted in speech, and spring from speech. One who steals that speech is a man who has stolen everything. (1.180–208)

[Assessing the Testimony]

When there is disagreement among witnesses, however, the majority is probative. When they are equal in number, the honest ones should be trusted; and when these are equal in number, those who have a better memory. When, however, in a lawsuit one finds an equal number of witnesses with good memory, given that the dharma of witnesses is subtle, in that case the testimony of witnesses comes to naught.

In various kinds of cases where the charges have been recorded, however, if a witness who has come to give testimony does not speak in conformity with what is written, it is as if he has not spoken. When there is disagreement with respect to place, time, age, material, amount, shape, and kind, that testimony is said to be null. When the witnesses testify to an amount either more or less than in the charge, that testimony also should be viewed as not given. These, texts of recollection declare, are the rules regarding testimony. (1.209–13)

[Proof in the Absence of Documents or Witnesses]

Where, due to negligence, a creditor has neither a document nor witnesses, and the defendant denies the claim, three procedural rules have been proclaimed: demanding at every appropriate time and indirect arguments; the third is said to be an oath. By means of these and in that order, he should prevail over the defendant in this manner.

When, after the demand has been made repeatedly—or else three, four, or five times—the man does not repudiate his claim, thereafter the man must pay his claim. When the demand has been rejected, however, he should pursue him through indirect arguments such as place, time, claim, connection, amount, activity, and the like. When even indirect arguments are ineffective, he should press him by means of oaths such as fire, water, and good deeds in conformity with the claim, time, and strength. (1.214–18)

[Ordeals]

A man whom the blazing fire does not burn or water holds submerged surmounts that accusation involving a great crime; in the opposite case, he is guilty.

In accusations concerning the character of women, as also in cases of theft and violence, this is the only procedure prescribed; as also in all cases where the claim is denied. For oaths, texts of recollection declare, are even for gods and seers; Vasistha submitted to an oath when he was under suspicion of being an evil spirit.[84] The seven seers, likewise, having come together to Indra in a case involving lotuses, submitted to an oath steadfastly in order to establish the innocence of one another.[85] (1.219–22)

[Confession]

When someone, having committed a crime or act of violence, either pays restitution or admits it on his own in the court, texts of recollection declare, his fine is halved. If, however, he conceals his crime because of his wicked nature and subsequently suffers defeat in the lawsuit, the assessors become displeased and a severe punishment falls on him. (1.223–24)

CHAPTER TWELVE

Early Commentators

The selections presented in this chapter are from the two earliest commentators of Manu, Bharuci and Medhatithi, both belonging to the second half of the first millennium. I have left out Visvarupa, the early commentator of Yajnavalkya. Although, as we have seen in chapter 7.2, he presents a detailed and scholarly disquisition on the epistemology of dharma, he appears to have had little interest in the nitty-gritty of legal procedure and court proceedings. His commentary on the sections on legal procedure is sparse.

These two jurists—Medhatithi more explicitly than Bharuci—present a realistic view of law and dharma, taking it away from the Veda and into the actual laws and practices governing various living communities. This is law on the ground that the courts are called upon to interpret and enforce.

12.1 BHARUCI

(See headnote to ch. 7.1.)

1

> Every day he should try lawsuits[1] following the criteria found in the regions and those found in authoritative treatises, lawsuits that fall individually under the eighteen avenues of litigation. (*MDh* 8.3)

The king should try lawsuits of litigants "every day," that is, tirelessly, lawsuits "that fall individually under the eighteen avenues," that is, topics of litigation such as the nonpayment of debts, which will be enumerated below. He should do so according to norms based on the practices of the region, that is, according to the dharma prevalent among farmers, traders, herdsmen, and the like, and according to norms found in authoritative treatises, that is, according to the criteria given in authoritative treatises, such as witnesses, ordeals, and the like.

Even though there are also worldly indicators stated in authoritative treatises, such as: "He should discover the internal disposition of men by external signs" (*MDh* 8.25) and "As a hunter traces the location of an animal by the trail of blood, so a king should trace the location of dharma by deductive reasoning" (*MDh* 8.44)— nevertheless, this statement reiterates the worldly means of proof. The means of proof disclosed by authoritative treatises, on the other hand, consist of witnesses, oaths, and the like. And even though in this treatise there is, for some reason or other, a reiteration of a worldly means of proof, nevertheless a treatise makes the worldly usage itself an authoritative means of proof with respect to certain lawsuits. Accordingly, the author will make statements such as: "When experts in sea voyages capable of forecasting profits with respect to

particular places and times fix an interest rate, that is exactly the rate for repayment" (*MDh* 8.157). Therefore, it is proper for him to mention "region" separately.

2

> He who knows dharma should examine the dharmas of castes and regions, as also the dharmas of guilds and the dharmas of families, and only then settle the dharma specific to each. (*MDh* 8.41)

"Dharma of castes" is a well-known expression. "Caste" means Brahman and so forth, and it is stated as eternal because it is disclosed by authoritative treatises. That of regions is the conventional, not based on the authority of a treatise, such as grazing of cattle, protection of water sources, and the like. The dharma of guilds is what is created by traders, artisans, and performers to assure the success of their undertakings. The king should set forth this dharma also. It should not be disregarded, thinking, "This is just a conventional rule." If the king were to show indifference to conventional rules, then norms would be demolished and the law of the fish would prevail.

12.2 MEDHATITHI

(See headnote to ch. 7.3.)

1

> Every day he should try lawsuits[2] following the criteria found in the regions and those found in authoritative treatises, lawsuits that fall individually under the eighteen avenues of litigation. (*MDh* 8.3)

The first half of the verse sets forth the criteria for arriving at a verdict, while the second half points out the number of subjects of litigation. The phrases "he should try" and "lawsuits" are carried over from the previous verse. "Every day he should try lawsuits"—going[3] every day, he should render a verdict in the lawsuits. "Following the criteria"—the word "criteria" refers to the means by which one arrives at a verdict. These criteria are twofold: one consists of evidence and the other consists of norms. Of these, the criteria for a verdict in a case consisting of evidence are witnesses and the like, while the criteria consisting of norms are those whereby, when there is no possibility of a decision in a case, the lawsuit is successfully completed. Thus, for example, a single witness who has taken an oath to tell the truth and who is accepted by both parties—that is, if both the plaintiff and the defendant agree that he will provide authoritative testimony—can provide the criteria for arriving at a verdict even though he may have not been examined by the court assessors. Whereas, unlike in the former example, the untruthful words of a man who has been so examined cannot be the basis for a decision in a case, even with the acceptance of the judicial interrogators.[4] Thus, norms become judicial criteria.

These norms, moreover, are twofold—general and specific—in terms of the differences among regions. They are also twofold—compatible or incompatible—in terms of the differences in their support.

The compatible ones are such as these. Among some people of the south, a sonless wife, when her husband has died, goes up to the pillar of the court. When she has come up to it, and she has been examined by the court officials and found to be of good character,[5] she obtains immediately

after that her inheritance in the presence of relatives belonging to the same ancestry. Likewise, in the north when there is a marriage proposal for a girl, if a meal is given to the suitor then she is pledged to him even if one does not say the words: "I give her to you."

The incompatible ones are as follows. In a particular region grain is given on credit in the spring, and twice the amount is received back in the autumn. Likewise, when a pledge has been given with permission for its use and the amount of the loan and interest has become double the loan, the pledge continues to be used until the principal has been paid. Now, these are incompatible with the rules: "He should charge 1.25 percent" (*MDh* 8.140) and "Interest on a loan shall never exceed twice the principal" (*MDh* 8.151).

Of these, the ones dependent on differences are the ones pointed out with the words "criteria found in the regions." The criteria found in authoritative treatises, however, are those one reads in a treatise. Among the latter, some norms have been invented by the authors of authoritative treatises, while others are established according to what is prevalent and simply restated[6] by them. Of these, an invented norm is as follows: document, enjoyment, and witnesses. Inference, however, is based on facts:[7] "As a hunter traces the location of an animal by the trail of blood, so a king should trace the location of justice by inference" (*MDh* 8.44). Even though every worldly norm does not become authoritative because of a statement of an author of a treatise, nevertheless it remains precisely a worldly norm. In some cases an authoritative treatise must rest on just such a worldly norm.[8] Now, the norms: "For this sort of crime, this is the ordeal" and "After the lapse of this much time, possession is adequate evidence," even though they are worldly, yet they are said to be "stated in treatises."

In the case of such a norm given by authors of treatises, moreover, when it has a proper basis, then it is authoritative. Any that lacks a proper basis should be disregarded. An example of this is the statement on the sequence to be followed in a document: "The scribe should write at the end: 'At the request of both parties, I, NN, the son of NN, have written this'" (*YDh* 2.88).[9] When the scribe writes down his name at the very beginning: "I, NN, the son of NN, am writing this," it does not create a flaw in the document. The only reason for his writing down his name is to reveal the identity of the scribe: "This was written by this person." For if that scribe is recognized as a trustworthy person through some other epistemic means, then his document is authoritative. But if he does not make himself known by recording his name and ancestry, then whose trustworthiness are we to investigate through some other epistemic means? On the contrary, if we were to recognize that he is a distinguished scribe by looking at another writing sample of his or through some other means, then, even if his identity is not revealed,[10] it does not create a flaw in the document. In this case, if the scribe does not write, "This was written by me," yet such a document does indeed have all the required attributes. In such a case this examination of the scribe becomes useful. The scribe who wrote the document is counted among the witnesses only when there are very few other witnesses. Where there are many trustworthy witnesses who have signed the document, however, the trustworthiness of the scribe is of little use.

Likewise, there is this other norm: "He may invalidate a document only on the basis of another document, and what is attested to by witnesses, on the basis of other witnesses, given that a document is superior to witnesses" (*NSm* 1.125). This norm also is without any grounds. Documents, for instance, are of two kinds: those executed by one's own hand and those executed by someone else. Those written by someone else are also of two kinds: those written by a scribe with his own hand and those written by an officially appointed scribe. Now, every kind of document executed by someone else must be always attested by witnesses. The reason the above norm is without any grounds is the fact that within this context, the distinction made in the statement "A document is superior to witnesses" is inapplicable. For this is the defining characteristic of a document: "The witnesses—who must be uneven in number—should also write in their own hand: 'I, NN, am a witness to this document,' preceded by the names of their fathers" (*YDh* 2.87).[11] Nor

do we recognize the authority of a document written by a single person, just like the testimony of a single witness.

However, this may be the basis for the distinction: once the witnesses have placed their signatures, then they themselves are considered the document. [12]

This qualification does not uphold the superiority of a document, because the reason for superiority is trustworthiness, and that should be subject to examination in both cases. Therefore, with respect to this kind of document there is the maxim regarding disagreement among witnesses:[13] "He should accept the testimony of the majority" (*MDh* 8.73). Also, the fact that a document was written by an officially appointed scribe does not give it a special status.

Here there is an additional factor, namely that the appointment is made of a person who has been examined.

But not all persons appointed by the king have been subject to a thorough examination. If, however, such an individual is quite honest,[14] it may well be that, because he is of the highest quality, he may, even alone, be accepted as providing corroboration. So, for instance, royal decrees relating to land grants to Brahmans are considered authoritative even when written by a single professional scribe. Take the case of a man who is refusing to pay a debt while there is an admission on his part written in his own hand: "I have received this much from this man, and I am obliged to pay him that." In this case, if he later says, "I did not receive," then he loses the case to those who present what was previously written down. In this situation, there is no room at all for witnesses.

Surely, it is by reason of the document executed by the man that one concludes, "He has admitted to this." And later the same man has said, "I did not receive it." In this case, between the two admissions, for what reason is the latter annulled by the former, and not the former by the latter? There is a doubt with respect to which contradicts which, because there is equality between the two. The only proper course, therefore, is to bring in other kinds of evidence.

That would be true if there was equality between the two. For it is possible that the admission "I did not receive it" is made because of greed and the like. Without having received it, however, someone will never say, "I received it," unless he is insane. In this case also, he may say that he repaid it but the original document could not be produced because it was not at hand and a receipt was not procured, either because there was no scribe present or because he was in a rush to attend to some other urgent business. In this kind of situation, there is indeed room for other kinds of evidence, such as witnesses.[15]

Also with regard to the statement, "He may invalidate a document only on the basis of another document" (*NSm* 1.125), it is not possible for this metarule to annul an assessment derived from how things actually work. For it is commonly seen that people pay off in installments the amount recorded in the document left in the hands of the creditor, and they do not record the amount paid off on the back of the document. They do this with the thought: "Today I have paid so much. Tomorrow, bringing the rest and combining the two, I will enter the total afterward. Or else, after paying off the entire amount in a few days, I will tear up the document." When he has been seized by the creditor, moreover, and is unable to repay the principal and interest apart from the portion already paid off, how can he prevail over the creditor, who says, "I will not yield so long as a receipt has not been given"?

If this metarule, "He may invalidate a document only on the basis of another document" (*NSm* 1.125), were applicable, furthermore, then how would one investigate whether it was executed through force or fraud? For in such a case there is no possibility of another document. Therefore, as in this case, even when there is clearly a document, other kinds of evidence are brought in to arrive at a decision, so must they be brought in elsewhere as well. Take for example a man who files a plaint, saying, "Placing trust in this man, I drew up the document.[16] He said, 'Accept this part of the loan today, on account of this being an auspicious day. Tomorrow I will give you the entire amount.' After saying this, he gave me only that part of the loan. He has not given me the rest." Under these

circumstances, there is room to bring in other kinds of proof. In that case, if the debtor has witnesses for the way it was carried out, then, given that the document presented is rendered invalid, the creditor is obliged to prove that he gave the amount the next day. On the other hand, if the conversation between the parties was carried out in secret, then there is room for ordeals. If, however, they have no faith even in these because they are not invariably accurate, then a ruling should be made through the use of an oath to tell the truth.

Surely, if this were so, a document written in one's own hand would lack any epistemic validity, because it would require corroboration from other epistemic sources. That would conflict with the statement: "Even without witnesses, a document signed by one's own hand remains valid."[17] *According to this maxim, when someone does not actually see with his own eyes something as it is being given, but only heard the debtor, after receiving the amount, engaged in a conversation in his presence, saying, "I received this amount from that man," such individuals can also act as witnesses. Here too it is possible for the debtor to say, "I admitted it because I placed my trust in him."*

We have already stated in this regard that it is not possible to invalidate true facts of the situation simply because they contradict a statement in a text of recollection. Furthermore, in a situation where there is no room for that statement, the document will be valid. In some situations there is no such room—when, for example, the document remains in the creditor's hands for a long time. One would question: if in fact the loan was not given,[18] then how is it that he never tracked the document down and had it turned over? For in matters of this kind it is most certainly improbable that someone would ignore it for a long time. From this one infers that the debtor is telling a lie. For it is said: "One should report to the king immediately or within three days when force is employed in transactions."[19] Alternatively, take the situation where there is a collateral that may be enjoyed but, with regard to its enjoyment, the time for redeeming the collateral had not been expressly stated, and there is dispute over it. Here a document executed in one's own hand remains valid[20] even in the absence of witnesses, for the debtors do not get to say: "This was stated out of affection for you.[21] Now, hand it over." Nor is there room for the statement given above, namely: "I drew up the document, and then he said, 'I will give the loan,' but he never did." If it was not given, how did he acquiesce in the enjoyment of the collateral?

If that is the case, is it not true that the proof consists of the enjoyment of the collateral accompanied by the document? But authoritative texts state that enjoyment alone constitutes proof: "Document, witnesses, and enjoyment: texts of recollection present these as the three kinds of proof by which a creditor obtains his property when it has been appropriated by someone." (*NSm* 1.65)

Why is this question raised against us when it has already been answered? Enjoyment over a specified period of time is proof, not enjoyment as such. For that is what we read: "When an owner looks on silently as something is being enjoyed by others in his presence for ten years, he is not entitled to recover it" (*MDh* 8.147). Likewise: "When a man looks on without speaking up while his land is being enjoyed by someone else, he loses his title to it in twenty years; in the case of movable property, in ten years" (*YDh* 2.24).

What then is the meaning of this: "He may validate a document only on the basis of another document" (*NSm* 1.125)?

Others have explained it in the following way. When there is a doubt regarding the specific author, whether a document was written by a particular person or not, it is verified by means of another document that one knows for certain was written by him. When a document had been executed in the presence of witnesses, however, a doubt whether it was executed by that person or not is removed by means of those witnesses; in this case, they alone provide the proof, and inspecting another document executed by him is of no use. In situations such as the deliberate refusal to repay a debt, moreover, a document is superior to witnesses alone. For witnesses are prone to forgetting; or they may be in cahoots with the one or the other party; or something else—they may

become guilty of one of the grievous sins that would cause their disqualification as witnesses. A document, on the other hand, would be quite safe, being in the custody of the plaintiff. This is the reason for its superiority over witnesses. This is precisely what he says: "A document is superior to witnesses." A man considers even something that he has forgotten to be true when it is confirmed by a document written in his own hand. Or else, when witnesses are dead, they are considered to provide proof when their signatures are recognized.

Other explanations have been well presented by Bhartriyajna[22] himself. Hence, they should be learned from that very work, explanations that are altogether based on authoritative epistemic sources. A norm, which is the cause of a text of recollection, should be adhered to.[23] It is not proper, furthermore, to assume that only texts of recollection are authoritative epistemic sources. For it is not possible to maintain that texts of recollection dealing with legal procedure are rooted in the Veda, because (i) the ways victory and defeat are determined in lawsuits are well-established matters; and (ii) they can be ascertained through means of knowledge such as perception. For this point is established: this is the way one person loses a lawsuit and the other person wins. Even if there is a Vedic statement containing indicators, it should be understood in the same way as: "A man desiring health should eat chebulic myrobalan."[24] With regard to these sorts of verbal affixes that have the nature of injunctions, we have investigated the matter in connection with the purification of articles, and therefore we will not embark on it once again here.[25]

2

The king should render a verdict in lawsuits based on the eternal dharma. (*MDh* 8.8cd)

Success and pleasure[26] are not eternal. Or rather, the eternal dharma consists of norms that do not derive from recent times. He should cherish these. Those, however, that have been initiated by present-day people should be disregarded, because they are not eternal.

3

He who knows dharma should examine the dharmas of castes and regions, as also the dharmas of guilds and the dharmas of families, and only then settle the dharma specific to each. (*MDh* 8.41)

[This section begins at p. 90, line 23 of Jha's edition.]

There are people following a single profession, such as traders, artisans, moneylenders, and carters. Their dharmas are "the dharmas of guilds." For example, some leaders of traders present the king's share verbally fixed: "We make our living by this trade. This is the king's share due to you from us, irrespective of whether our profits are more or less." When the king has agreed to this, to obtain copious profits from their trade they create norms among themselves, norms that are not detrimental to the kingdom: "This commodity should not be sold for this length of time"; "This fine is earmarked for the king's sojourn here[27] or for a festival of the deity." If someone violates this, he should be punished as a man violating in this manner the dharma of the guild.

"The dharmas of families"—a family is a lineage. In such a lineage, there is a dharma that has been instituted by an ancestor of renowned glory: "When anyone born in our lineage obtains wealth from anywhere, he shall not use it for some other purpose without first making a gift to Brahmans"—these statements and others like it are dharmas. Likewise, one should employ as officiating priests only those who have acted as a priest for their ancestors or who have been

recipients[28] of gifts such as that of a virgin in marriage, so long as they are suitable. When someone violates this, the king should force him to conform.

These have been reiterated because of the fear that they may be considered as not dharma, because of their close connection to particular groups. I will explain later that this is different from the breach of contract.

CHAPTER THIRTEEN

Medieval Commentators and Systematizers

13.1 VIJNANESVARA

(See headnote to ch. 8.2.1.)

As already noted, Vijnanesvara, in contrast to his predecessor Visvarupa, is particularly interested in law in the strict sense and in the procedures that should be followed in courts of law. His commentary on the second chapter of Yajnavalkya's root text that deals with legal procedure (*vyavahra*) is nearly twice as long as his commentary on the first chapter dealing with proper conduct (*cra*). I give below some selections that are representative of his juridical thinking.

Selection #1 deals with the filing of a lawsuit and the procedural rules relating to the initial charge, the summoning of the defendant, writing down the plaint and plea, and issues relating to evidence that each litigant would use during the trial. Vijnanesvara presents detailed discussions of the requirements of a valid plaint and plea, and the various classifications of plea. He also clearly delineates the entire court proceeding, from the initial filing of the charges to the verdict and the enforcement of the verdict.

The next selection deals with countersuits that the accused may file against the plaintiff. This is generally disallowed except when the suit deals with specific matters, such as altercations. The defendant in a lawsuit, moreover, is also protected from further suits by other individuals while the court proceedings are ongoing.

Selections #3 and #4 deal with evidence, both how it should be evaluated in reaching a verdict and the kinds of evidence and their relative strength. What happens, for example, if a plaint contains several charges and only some of them are substantiated by evidence? What happens when there is contradictory evidence? How can one identify forged documents and perjured testimony? He also presents a very weak and somewhat idiosyncratic defense of the principle of enjoyment as proof of ownership. Basically, he agrees with the opponent that enjoyment alone can never prove ownership. The only right such enjoyment gives to the man is that he is not expected to return any products that he has consumed: for example, he does not have to return the rice he has harvested from a property he enjoyed without title when the property is returned to its rightful owner.

Finally, in selection #5, Vijnanesvara deals with the gradation of courts and the appeals process for litigants who lose their cases in lower courts.

Even though he presents detailed rules for filing lawsuits, Vijnanesvara appears to be lenient with regard to lapses in following those rules. Thus in selection #2 he says that a litigant identified as *hnavdin*, which generally refers to one who has lost his case because of procedural flaws, actually does not lose his case, but is only subject to a fine.

Medhatithi viewed rules of legal procedure as based on reason and practice, not on the Veda. Even though Vijnanesvara does not engage is such bold assertions, we see hints that he also considered many of the rules contained in Yajnavalkya's text to be based on jurisprudential

reasoning (*nyya*) and, at least implicitly, not on the Veda. Thus in his comments on *YDh* 2.23cd, he says, “It is solely on this legal reasoning that this statement is based.” Likewise, ownership of property is based on worldly customs and not on textual or scriptural sources (*stra*).

Although, as noted above, I have used the text from my forthcoming edition of the *YDh* as the basis for my translations in chapters 5 and 11, here, rather, I use the text that formed the basis of Vijnanesvara’s own commentary, and also his numbering of the verses.

1

> If someone who has suffered an injury at the hands of others in a manner contrary to texts of recollection or normative practice reports it to the king, it is indeed a subject of litigation. (*YDh* 2.5)

If someone who has suffered an injury—i.e., has been attacked—at the hands of others in a manner contrary to the dictates of treatises on dharma or proper practice reports it to the king or to a judge, it, as it is reported, becomes a subject of litigation. Litigation consists of plaint, plea, doubt, reason,[1] reflection, evidence, verdict, and enforcement. Its subject is its scope. This is the general definition of litigation.

It is, furthermore, of two kinds, containing an accusation based on suspicion and an accusation based on fact, as Narada states:

> A lawsuit, however, should be recognized as having two kinds of accusations, in terms of an accusation based on suspicion and an accusation based on fact. Suspicion, however, comes from association with bad people, and fact from finding such things as stolen goods. (*NSm M* 1.22)

…An accusation based on fact is also of two kinds: one consists of an omission and the other consists of a commission. For example: “He borrowed money and so forth from me and does not return it”; and, “He is stealing my land and so forth.”…

The phrase “If someone…reports it to the king” points out that the man comes of his own accord and reports it, and is not sent by the king or one of his officials. Accordingly, Manu states: “Neither the king nor any official of his shall initiate a lawsuit on his own; nor shall he in any way suppress an action brought before him by someone else” (*MDh* 8.43).

The phrase “at the hands of others,” meaning at the hands of one, two, or many others, points out that litigations may be initiated by one person against one, two, or many individuals.…

The same phrase, “If someone…reports it to the king,” means that when he is questioned by the king, he, wearing a modest garment, should report. And if what is reported is proper, the defendant is summoned through such means as a dispatch with the royal seal, while individuals such as those indisposed are not summoned— matters such as these have not been explicitly stated, because they are established by implication. In a different text of recollection, however, this has been clearly stated:

> At the proper time, he should ask the plaintiff standing before him and pleading: “What is your case? What is your injury? Do not be afraid, gentleman; speak up.” By whom? In what place? When? Why?—so should he question someone who has approached the court. When

the man so questioned gives a reply, he should reflect on it along with the assessors and Brahmans. If the case is proper, he should then issue the summons: he should either dispatch the royal seal to the man or send an official with orders.

The king should not summon the following: the indisposed; children; the elderly; those in difficult circumstances or burdened with obligations; those who would suffer a great deal of harm to their undertakings; those suffering a calamity; those burdened with royal duties or a religious festival; those who are insane, intoxicated, totally unmindful, or anguished; and dependents; as also, these kinds of women: helpless, young, of noble birth, having just given birth, of the highest social class, and a virgin—these are said to be under the authority of their relatives. It is permitted to issue summons to the following women: those on whom their families depend or who are licentious, prostitutes, the lowborn, and those fallen from their caste. Taking into consideration the time and place, as also the relative gravity of the case, the king may summon even the indisposed and so forth, sending vehicles to bring them slowly. In serious cases, after reviewing the accusation, the king may summon even recluses and the like living in forests without making them angry.[2]

The norms relating to arrest also, which are established by implication, are given by Narada:

When a man does not make himself available as a case against him is about to be filed, or when he brushes off the plaintiff's directive, the latter may place him under legal detention until the court summons has been conveyed. Legal detention is of four kinds: detention in a particular place, for a particular length of time, with respect to travel abroad, and with respect to a particular activity. A man placed under legal detention shall not defy it.

When a man placed under legal detention at the proper time for legal detention violates it, he should be fined; whereas a man placing someone under legal detention in a wrongful manner should be punished.[3]

While crossing a river, in a wild tract, in a dangerous region, and during turmoil—someone placed under legal detention in circumstances such as these does not commit a crime by violating that legal detention executed by a foe—as also someone planning to get married, afflicted with a sickness, preparing to offer a sacrifice, or struck by a calamity; someone sued by another person or occupied with royal business; cowherds while looking after cows, farmers while harvesting the crop, craftsmen while engaged in their work, and soldiers during hostilities. (*NSm* 1.41–46)

"Legal detention" means confinement on the orders of the king. The indisposed and the rest should send a son or the like or some other friend to represent them. Such individuals do not fall into the category of a person who illegally speaks for another in a lawsuit, because of Narada's statement: "When a man who is not the brother, the father, the son, or a duly appointed proxy speaks for another in a lawsuit, he deserves to be punished, as also anyone who speaks falsely" (*NSm M* 2 .23).

In the presence of the defendant, the allegation should be written down exactly as it was reported by the plaintiff, recording the year, month, fortnight, day, name, caste, and the like. (*YDh* 2.6)

….

Given that at the original time of reporting the words of the plaintiff were already written down, it would be pointless to write them down again. To answer this objection, the author says: "year, month" and the rest…. The phrase "and the like" is meant to include such factors as the article and its quantity, place, time, reason for forbearance,[4] and the like. As it is said:

> Containing the charge; endowed with the required characteristics; complete; distinct; containing the issue to be proved; using words with literal meanings; conforming to the original charge; well recognized; not conflicting; certain; capable of proof; concise, yet containing the entire charge; not inconsistent with regard to place and time; stating the year, season, month, fortnight, day, time, country, region, place, house, the name of the article contained in the charge, caste, appearance, and age; containing the dimensions and the amount of the article contained in the charge; stating the names of the plaintiff and the defendant; inscribed with the names of the ancestors of opponent and self, and of several kings; stating the reasons for forbearance and the injury suffered; and pointing out the taker and the donor—when a report containing these characteristics is made to the king, it is known as the plaint.[5]

…The difference is that at the time of the initial reporting only the charge was written down, whereas in the presence of the defendant it is written down along with attributes such as the year and month.

Even though the attribute of year is not necessary in all lawsuits, nevertheless in pledges, gifts, and sales it is necessary to arrive at a verdict, because of the statement: "in the case of a pledge, gift, or purchase, however, evidence relating to an earlier transaction has greater force" (*YDh* 2.23). It is also necessary in a lawsuit relating to money. For example, in a given year a man borrows a certain amount of money from a particular individual and returns it. Then in a different year the same man again borrows the same amount of money from the same individual. When the latter demands it, if he says, "True, I did borrow it, and I returned it," it can then be shown that the amount was borrowed and returned in a different year and not in the year in question. One should consider the applicability of the month and so forth also in the same manner. The attributes such as region and place, on the other hand, are necessary only in the case of immobile articles, because a text of recollection states:

> Country, place, location, caste, name, neighborhood, extent, name of the field, the father and grandfather, and enumeration of past kings—one should record these ten in lawsuits pertaining to immovable property. (=*KtSm* 127–28)

"Country," such as the middle country. "Place," such as Varanasi. "Location" refers to a house, field, and the like distinctly located in that very place and with its eastern and western boundaries demarcated. "Caste" refers to the fact that the plaintiff and the defendant are a Brahman and the like. "Name," such as, Devadatta. "Neighborhood" refers to the people living in the vicinity. "Extent" is a Nivartana[6] and similar size of the land. "Name of the field," such as Sali field, Kramuka field, Krsna land, Pandu land. The names of the father and grandfather of the plaintiff and the defendant. Enumeration of the names of the previous three kings.

The intent is that among the year and so forth, what is useful to a particular lawsuit should be written down.

Given that the defining characteristics of a plaint have been determined in this manner, the specious nature of plaints that outwardly appear to be plaints but lack the defining characteristics of

a plaint is clearly established. Consequently, Yogisvara (Yajnavalkya) has not described specious plaints separately. Others, however, have described them very clearly: "He should reject a specious plaint that is implausible, presents no loss, is meaningless, is without cause, is incapable of proof, or is contrary" (*KtSm* 140). An implausible plaint is one such as: "He borrowed my hare's horn and does not return it." A plaint that presents no loss is one such as: "He carries on his activities in his house with the light provided by the lamp in my house." A meaningless plaint is one devoid of sense, such as "*kacaatapagajaadaba*."[7] A plaint without cause is one such as: "Devadatta here recites the Veda in a lovely voice in front of our house." A plaint that is incapable of proof is one such as: "Devadatta laughed at me while knitting his brow." The latter is incapable of proof because there can be no evidence. Because the act was so fleeting, it is impossible to find witnesses, much less a document; and because it is trifling, there cannot be an ordeal. A plaint that is contrary is one such as: "I was cursed by a dumb man." Or it may be one that runs contrary to the city, country, and the like:

> All these suits are said to be inadmissible: one that is proscribed by the king; one that is hostile to the inhabitants of the city, to the entire country, as well as to the major constituencies of the state; as also those hostile to the prominent men of a city or a village. (*BSm* 2.43)

Now, with regard to the statement: "A plaint that mixes several subjects is invalid" (*KtSm* 136), if it is said to mix several things, then there is no fault, because plaints of the following sort are not faulty: "This man has stolen my gold, clothes, or money and other such items." If it is argued that mixing subjects such as the nonpayment of debts results in a specious plaint, that is also incorrect. One does, indeed, take as legitimate plaints ones such as the following: "This man borrowed my money on interest, and I deposited gold with him. This man has stolen my field." On the contrary, it only means that, because they involve different kinds of evidence, the plaints of the lawsuit should be heard sequentially and not simultaneously. Accordingly, Katyayana has said: "With the desire to find out the truth, a king may freely admit even a lawsuit with multiple plaints that is ascertained to be well in conformity with legal procedure" (*KtSm* 137). Therefore, the meaning of the above statement is that a plaint that mixes many subjects is invalid when the subjects are taken up simultaneously.

The use of the term "plaintiff" (*YDh* 2.6) comprehends his son, father, and the like, because they share a common interest in the lawsuit. It comprehends also an appointed designee, because by that very appointment he shares a common interest in the case. The legal victory or defeat of an appointed designee actually belongs to the original leading litigants, according to the text of recollection:

> Whether a man has been appointed by the plaintiff or deputized by the defendant, when he argues the case of the other, the victory and the defeat affect just the two of them. (*KtSm* 91)

This plaint, moreover, should be first written down, either on the ground or on a plank using white chalk, and then, after it has been corrected by addition and deletion, it should be written on paper, because of Katyayana's statement:

> The adjudicator should have the plaint that has been spontaneously presented written down, first on a plank using white chalk and then, once it has been corrected, on paper. (*KtSm* 131)

Corrections, furthermore, may be carried out only until a plea has been entered and never after that, because that would result in a never-ending process. For this very reason, Narada has stated:

> He may correct the plaint, however, only until a plea has been entered. Once the plaint has been checked by the plea, the correction has to be halted.[8]

When the assessors have a plea entered even before getting the plaint corrected, then the king should punish them with the fine specified in the statement: “Assessors who act contrary to texts of recollection or in a similar manner out of love, greed, or fear should be punished individually with a fine equal to twice the amount under litigation” (*YDh* 2.4). Then he should proceed over again with the case preceded by the plaint.

Now, the question arises as to what must be done once the plaint corrected in this manner has been written down on paper. Therefore, the author says:

> After the defendant has heard the plaint, his plea should be written down in the presence of the plaintiff. (*YDh* 2.7ab)

…The refutation of the plaint is called a plea. Accordingly, it is said:

> Encompassing the plaint, substantive, unambiguous, not confusing, and comprehensible without an explanation: such, experts in these matters state, is a plea.[9]

“Encompassing the plaint,” that is, capable of refuting it. “Substantive,” that is, reasonable, not contrary to reason. “Unambiguous,” that is, without uncertainty. “Not confusing,” that is, not contradicting what was said before or after. “Comprehensible without an explanation,” that is, its meaning should not need explanation because of the use of obscure words, or of elliptical language with compounds where the implied cases of the words are equivocal, or of a foreign language.[10] This is the sort that constitutes a proper plea.

There are four kinds of such pleas: admission, denial, special plea, and prior judgment. Accordingly, Katyayana says: “Admission, denial, special plea, and prior judgment: these are the four kinds of plea” (*KtSm* 165).

Of these, admission is as follows: when it is alleged, “He owes me one hundred rupee coins,” he replies, “True, I do owe that.” Accordingly, it is said, “Stating the truth of the charge is said to be admission” (*KtSm* 168).

Denial, on the other hand, is to say, “I do not owe that.” Accordingly, Katyayana says:

> If the accused rejects the accusation, one should recognize that plea as denial in terms of legal procedure. (*KtSm* 167)

A plea of denial, furthermore, is one of four types:

> “This is false”; “I do not know anything about this”; “I was not present there at that time”;

and “I was not born at that time”—these are the four types of denial. (*KtSm* 169)

Special plea is this: “True, I took it, but I returned—or—I received it as a gift.” Accordingly, Narada states:

> With regard to the charge written down by the plaintiff, if the defendant after admitting, “It is so,” provides an exculpating reason, it is said to be a special plea.

A plea of prior judgment, on the other hand, is when the accused states this: “I was already accused by him with respect to this charge. On that occasion, he was defeated through a legal trial.” Katyayana, moreover, states:

> If a man has a plaint recorded once again even though he has suffered a loss in a court proceeding, one should tell him: “You have been already defeated.” This is called a plea of prior judgment. (*KtSm* 171)

Given that the defining characteristics of a plea have been determined in this manner, the specious nature of statements that outwardly appear to be pleas but lack their defining characteristics is established by implication. This is clarified in another text of recollection:

> What is ambiguous, what is different from the original charge, what is too small or too large, what covers only a part of the plaint—none of these constitutes a plea. What slips into a different subject of litigation, what does not cover the entire plaint, what has a hidden meaning, what is inconsistent, what is intelligible only with explanations, and what is not meaningful—these do not constitute a plea that would bring success to his case. (=*KtSm* 188, 175)

In this passage, the ambiguous is like this: when it is alleged, “This man took one hundred Suvara gold coins,” he replies, “True, I took one hundred Suvara gold coins or one hundred Ma gold coins.” What is different from the original charge is as follows: when the accusation relates to one hundred Suvaa gold coins, he says, “I do owe one hundred Paa copper coins.” What is too small is as follows: when the accusation relates to one hundred Suvara gold coins, he says, “I do owe five hundred.” What is too large is as follows: when the accusation relates to one hundred Suvara coins, he says, “I owe two hundred.” What covers only a part of the plaint is as follows: when the accusation relates to gold, clothes, and so forth, he says, “I took the gold and nothing else.” What slips into a different subject of litigation is as follows: when the accusation relates to the nonpayment of a debt, the plea uses a different subject of litigation, as, for example, when the accusation relates to one hundred Suvara gold coins, he says, “He beat me up.” What does not cover the entire plaint does not cover such attributes as the region and place, as, for example, when the plaint has been written: “A field located in the middle region, in Varanasi, in the eastern direction was seized by him,” the plea says, “A field was seized.” What has a hidden meaning is like this: when the accusation relates to one hundred Suvara gold coins, he says, “Is it only I who owe him?” Here by allusion it suggests that the adjudicator, the assessor, or the plaintiff owes to someone else. Hence it has a hidden meaning. What is inconsistent is a plea in which there are contradictions between statements made earlier and later, as, for example, when the accusation has been made

relating to one hundred Suvara gold coins, he says, "True, I did take it, but I do not owe." What is intelligible only with explanations is a plea that is intelligible only with explanations because of the use of elliptical language with compounds where the implied cases of the words are equivocal or because of the use of words from a foreign language….[11] What is not meaningful is a plea that goes against reason, as, for example, when there is an accusation: "This man took one hundred Suvara gold coins on interest. He paid only the interest but not the principal," he says, "True, I paid the interest, but I did not take the principal."

The use of "plea" in the singular precludes a combination of several pleas. Accordingly, Katyayana says:

> When there is an admission with regard to one portion of the plaint, a special plea with regard to another portion, and a denial with regard to some other portion, it is an invalid plea due to a combination. (*KtSm* 189)

He himself states the reason it is an invalid plea:

> In a single lawsuit, however, the burden of proof cannot fall on both the litigants; both cannot succeed in demonstrating the case; and there cannot be two kinds of proof in the same case. (*KtSm* 190)

When there is a combination of denial and special plea, the burden of proof falls on both the plaintiff and the defendant, because of the text of recollection: "When there is a denial, the burden of proof falls on the plaintiff, while when there is a special plea it falls on the defendant." There is a contradiction when both occur in the same lawsuit, as, for example, when there is an accusation: "This man has taken a Suvara gold coin and one hundred rupee coins," and he says, "I did not take the Suvara coin. I did take the one hundred rupee coins, but I returned them." When there is a combination of special plea and prior judgment, however, both burdens of proof fall on the defendant alone: "When the two pleas consist of prior judgment and special plea, the defendant should present the proof."[12] For example, "I did take the Suvara coin but returned it. With regard to the rupee coins, he was defeated in legal trial." In this case also the prior judgment should be proved by producing the victory document or through eyewitnesses, whereas the special plea should be proved through witnesses, documents, and the like. Hence, there is a contradiction. Combinations of three pleas should be considered in the same way, as, for example, when there is an accusation: "This man took a Suvara gold coin, one hundred rupee coins, and clothes," he says, "True, I took the Suvara gold coin, but I gave it back. I did not take the one hundred rupee coins. With respect to the clothes, however, he was defeated in a previous trial." The same goes also for the combination of all four kinds of plea.

These are considered invalid pleas, moreover, only when they are taken up simultaneously, because each individual portion cannot be proven without the corresponding proof. When they are taken up sequentially, they are valid indeed. The sequence is determined by the wishes of the plaintiff, defendant, and assessors. When, moreover, there is a combination of two pleas, the first trial should be conducted with respect to the one dealing with the more significant amount by presenting evidence for that plea. Thereafter, one should proceed with the trial by taking up the plea dealing with the smaller amount. When there is a combination of admission and another kind of plea, however, one should proceed with the trial by taking up the other kind of plea, because no proof is needed in the case of admission. Accordingly, Harita, after introducing the issue:

If both a plea of denial and a special plea are given in the same case, or admission accompanied by another plea, which of these pleas should be accepted?

states:

It should be the plea that deals with the more significant amount or where the evidence will bear fruit; such a plea is not combined. Otherwise…

The rest of the sentence is: "it becomes combined." The meaning is that, with respect to the rest, the sequence is according to one's wishes. In this case, a plea dealing with the more significant amount is as follows. To an accusation: "This man took a Suvara gold coin, one hundred rupee coins, and clothes," he responds, "True—I did not take the Suvara gold coin or the one hundred rupee coins; but I did take the clothes, which I returned." Here, because the plea of denial pertains to the more significant amount, he should take the evidence presented by the plaintiff and carry out the first lawsuit, and afterward the lawsuit pertaining to the clothes. The same principle should be applied to the combination of denial and prior judgment, as well as to the combination of special plea and prior judgment. For example, in that same accusation, take the case of a plea: "True, I did take the Suvara gold coin and the one hundred rupee coins, and I will return them. However, I did not take the clothes," or "I took the clothes but returned them," or, "in the case of the clothes, he was previously defeated in a trial." Here, even though the admission pertains to the more significant amount, because no evidence is presented there, he should proceed with the trial by taking the evidence with regard to the plea of denial and so forth. Take the case of two pleas, denial and special plea, however, that cover the entire plaint. For example, someone taking the horns as an identifying mark says: "This cow of mine was lost at this particular time. I saw it in this man's house today." The other man, however, says: "That is false. It was in my house even before the time he has mentioned," or "It was born in my house." Now, this is not an invalid plea, because it is able to rebut the plaint. It is neither simply a plea of denial, because a special plea has been introduced, nor a special plea, because no admission is made even with regard to a portion of the plaint. Therefore, this is a plea of denial coupled with a special plea. And here the burden of proof is on the defendant, because it is stated: "In a special plea, the burden of proof falls on the defendant" (*DhKo* I: 221).

Why is it that the burden of proof does not fall on the plaintiff, because it is stated: "In a plea of denial the burden of proof falls on the plaintiff"? (*DhKo* I: 221)

That is because this statement refers to an uncombined plea of denial.

How is it then that the statement, "In a special plea, the burden of proof falls on the defendant," also does not refer to an uncombined special plea?

That is not true, because, given that each and every special plea is accompanied by a plea of denial, an uncombined special plea simply does not exist. In special pleas we are acquainted with, the very admission of one portion of what is alleged in the plaint results in the denial of another portion of it. For example: "True, I took one hundred rupee coins, but, because I returned them, I do not owe anything." The difference, however, is that in the original example not even a portion of what is alleged in the plaint is admitted. This has been clearly explained by Harita: "Between a denial and a special plea, one should take up the special plea."[13]

There may be an instance where a combined plea of denial and prior judgment would cover the entire plaint. For example, when someone is accused: "He owes me one hundred rupee coins," he replies, "That is untrue. On this very issue, he was defeated in a previous lawsuit." Here also the

burden of proof falls squarely on the defendant, because of the statement: “In a plea of prior judgment and a special plea the defendant should produce the evidence.” This is also because an uncombined prior judgment simply does not exist, because that would make it an invalid plea.

An admission also is a valid plea, precisely because it eliminates from the plaint, which was presented as something in need of proof, that very characteristic by presenting it as something already proved.

When, however, there is a combination of a special plea and prior judgment, as, for example, when someone is accused: “He took one hundred,” he replies, “True, I did take, but I returned it. And in this very case, this man was defeated through a prior judgment,” then one should proceed according to the wishes of the defendant.[14]

In this way, it should never result that the burden of proof falls on both the plaintiff and the defendant in a single legal proceeding. That is the final conclusion.

After the plea has been written on paper in this manner, this question arises: who should present the evidence, given that proving what is to be proven depends on evidence? Therefore, he says:

> Immediately thereafter, the plaintiff should have the evidence he will use to prove what is alleged in his plaint written down. (*YDh* 2.7cd)

…

When he says, “the plaintiff should have the evidence he will use to prove what is alleged in his plaint written down,” he means that the person who has the burden of proof should have the evidence for what is alleged written down. And therefore, in a plea of prior judgment, because it is the prior judgment that requires proof, the defendant is turned into the plaintiff. So, it is he who must write down the evidence. In a special plea also, because it is the special plea that requires proof, the very man who made the special plea is turned into the plaintiff. So, it is he who must write down the evidence. In a plea of denial, however, the original accuser is himself the plaintiff, and it is he who must point out the evidence.

When he says, “thereafter, the plaintiff should have written down,” what he means to say is that the plaintiff himself should have it written down, not someone else.

And for the same reason, in a plea of admission the very presentation of evidence does not take place, because, given that there is nothing to prove, neither the person presenting the plaint nor the person making the plea occupies the position of plaintiff. Therefore, it is understood that right at this point the lawsuit is completed.

These very points have been made clearly by Harita: “In pleas of prior judgment and special plea, however, the defendant should present the evidence, whereas in a plea of denial it is the plaintiff. In an admission, there is no evidence.”

…

> If the evidence is validated, he wins the case; the opposite, if it is otherwise. (*YDh* 2.8ab)

….

> In litigations, the above legal procedure has been shown to have four feet. (*YDh* 2.8cd)

….

Of these, the first is the foot consisting of the plaint, stated in: "In the presence of the defendant, the allegation should be written down" (*YDh* 2.6). The second is the foot consisting of the plea, stated in: "After the defendant has heard the plaint, his plea should be written down" (*YDh* 2.7ab). The third is the foot consisting of evidence, stated in: "Immediately thereafter, the plaintiff should have the evidence he will use to prove what is alleged in his plaint written down" (*YDh* 2.7cd). The fourth is the foot consisting of proving what has to be proven, stated in: "If the evidence is validated, he wins the case" (*YDh* 2.8ab)….

When there is a plea of admission, however, because there is no presentation of evidence and the case made in the plaint does not have to be proved, the foot consisting of proving what has to be proven is absent. Consequently, the legal procedure here consists of only two feet.[15]

Immediately after entering the plea, there follows among the assessors a deliberation on the burden of proof characterized by a reflection as to whether the evidence should be presented by the plaintiff or the defendant. But Yogisvara (Yajnavalkya) does not mention this as a foot of legal procedure, and such deliberation is unconnected with the litigants. Therefore, it is certain that such deliberation does not constitute a foot of legal procedure.

2

….

> Until the accusation has been disposed of, the defendant may not file a counteraccusation against the plaintiff. (*YDh* 2.9ab)

…. Until the accusation has been disposed of, i.e., has been removed, he may not file a counteraccusation, i.e., not charge with an offense, the plaintiff. Even though a special plea has the characteristic of a countersuit, nevertheless that does not fall within the scope of this prohibition because it is intended to remove the offense that he is charged with. Therefore, this prohibition refers to a countersuit that is not aimed at squashing the suit against oneself. This is stated with reference to the defendant.

Then, with reference to the plaintiff, he states:

> No one else may file an accusation against the accused; and what has been stated may not be altered. (*YDh* 2.9cd)

When a man has been sued by one person, another plaintiff shall not sue him before the first suit has been disposed of. Furthermore, "what has been stated," i.e., what was stated at the time the charges were initially filed, "may not be altered," i.e., changed to something contrary to it. What he means to say is this. Whatever item with whatever characteristics was reported at the time of filing the initial charges, that item should be written down with exactly the same characteristics also at the time of the formal plaint, and in no other form.

Is it not true that this has already been stated: "In the presence of the defendant, the allegation should be written down exactly as it was reported by the plaintiff" (*YDh* 2.6)*? For what reason it is stated again: "what has been stated may not be altered"?*

We reply. The passage, "In the presence of the defendant, the allegation should be written down exactly as it was reported by the plaintiff," states that whatever item was reported at the time of the initial filing of charges, that same item should be written down in exactly the same way also at the time of the formal plaint; there should not be a different item given within the same subject of

litigation. So, for example, after stating at the time of the initial filing of charges: “This man took one hundred rupee coins on interest,” at the time of the formal plaint in the presence of the defendant he should not state: “He took one hundred items of clothing on interest.” That being the case, even if he does not proceed to another subject of litigation, by proceeding to a different item he is liable to be punished as a flawed litigator.[16] With the statement, “what has been stated may not be altered,” even though the item remains the same, proceeding to a different subject of litigation is prohibited. For example, after stating at the time of filing the initial charges: “After taking one hundred rupee coins on interest, he does not return them,” at the time of the formal plaint, he says: “He robbed one hundred rupee coins by force.”[17] In the former case, proceeding to a different item was prohibited; here, on the other hand, proceeding to a different subject of litigation is prohibited. Thus, there is no tautology. This same point has been clarified by Narada:

> When someone, after abandoning the previous subject of litigation, once again takes up a different one, he should be recognized as a flawed litigant because he went on to a different subject of litigation. (*NSm M* 2.24)

A flawed litigant should be punished; he does not lose the original lawsuit. Therefore, the instruction contained in statements such as: “Until the accusation has been disposed of” (*YDh* 2.9ab) is meant only to obviate errors on the part of the plaintiff and the defendant; its scope does not include the success or failure in the original lawsuit. For this very reason he will state: “Discarding subterfuge, the king should conduct judicial proceedings in accordance with the facts” (*YDh* 2.19).

One should understand, moreover, that this applies to lawsuits relating to property. In the case of a lawsuit relating to an act committed through anger, however, when an erroneous statement is made, the man indeed loses even the original lawsuit. Accordingly, Narada states:

> In all litigations concerning property, one is not defeated when he engages in subterfuge; in those relating to farm animals,[18] women, land, and nonpayment of debts, even though he should be punished, he does not lose the case. (*NSm M* 2.25)

The meaning of this is as follows. In all litigations concerning property, but not in those relating to acts committed through anger, even when he, engaging in subterfuge, makes an erroneous statement, he is not defeated. The meaning is that he does not lose the original lawsuit. An example of this is contained in the statement, “farm animals, women….” As in cases relating to farm animals, women, land, and the nonpayment of debts, even though the man must be punished for making an erroneous statement, he does not lose the original lawsuit, so also in all litigations relating to property. Because the expression “litigations concerning property” is used, it is understood that when an erroneous statement is made in litigations relating to acts committed through anger, the litigant loses even the original lawsuit. For example, after stating at the initial filing of charges: “This man hit my head with his foot,” when at the time of the formal plaint a man says: “This man hit my hand with his foot,” he not only is punished but also loses the case.

He gives an exception to the rule: “Until the accusation has been disposed of, the defendant may not file a counteraccusation against the plaintiff.”

> He may, however, file a counteraccusation in cases involving brawls and violence. (*YDh* 2 .10ab)

Altercation consists of verbal or physical assault, and violence refers to such offenses as killing a living being by means of poison, weapons, and the like. In such cases, given that a counteraccusation is possible, he may bring a counteraccusation against the plaintiff even before the suit filed by the latter has been disposed of.

Is it not true that even here, given that the counteraccusation has the character of another plaint, because it does not constitute a plea insofar as it fails to quash the plaint, the impossibility of having two simultaneous court proceedings remains the same?

That is true, but here the counteraccusation is presented not to have simultaneous court proceedings. On the contrary, it is for the purpose of obtaining a lesser punishment or preventing a greater punishment. So, for example, when there is a suit: “This man beat me” or “This man cursed me,” and there is a counteraccusation: “He beat me first” or “He cursed me first,” the punishment is lessened. Accordingly, Narada states:

> The man who first throws an insult, however, is certainly guilty. The one who does the same afterward has also committed an offense, but a heavier punishment is meted out to the one who did it first. (*NSm* 15.10)

When, on the other hand, two people do something simultaneously, like beating each other, then there is no room for a greater punishment:

> When an assault or an act of violence has started simultaneously and no special circumstances are perceived, the same punishment is meted out to both. (*NSm* 15.9)

Thus, even though it is not possible to conduct simultaneous court proceedings, in cases of altercation and the like a counteraccusation is meaningful, while it is meaningless in cases involving the nonpayment of debts and the like.

3

> In case someone denies a written plaint containing several parts and and the plaint is later proven with regard to one of its parts, the king should make him pay the entire claim; he may not, however, recover a claim not recorded in the plaint. (*YDh* 2.20)

….

This, moreover, is not just a text-based rule, because when it is determined that a defendant has lied with respect to one element of the plaint, the assumption is that he may have lied also with respect to another element. Thus, because of this very text of Yogisvara (Yajnavalkya) supported by the notion of assumption, which is another name for logical reasoning, the verdict is that the king should force him to pay the entire claim. Likewise, moreover, when a verdict is reached by following logical reasoning and the text, no fault accrues to those who conducted the court proceedings even when the actual facts turn out to be different. Accordingly, Gautama, after stating, “Logical reasoning is the means of arriving at a correct decision. Having analyzed by that means, he should decide equitably,” sums up: “Therefore, the king and the teacher are not to be blamed” (*GDh* 11.23–24, 32). Furthermore, what is understood here is not simply that when a defendant has been

made to admit one element of the plaint, his words are not to be trusted, because of the statement: "the plaint is later proven with regard to one of its parts; the king should make him pay the entire claim."

With respect to Katyayana's statement—

> Even in an accusation consisting of several points, as much as the creditor proves by means of witnesses, only that much money—what he has proved—does he receive. (*KtSm* 473)

—it refers only to debts incurred by a father or a similar person that have to be paid by his son and the like. For in such a situation, when someone like a son is sued with respect to many items and he answers, "I do not know," he does not become a litigant entering a plea of denial. Therefore, even when he is made to admit one element of the plaint, he cannot be viewed as a total liar. Consequently, the rule "In case someone denies a written plaint" does not apply to such a case. This is because there is no denial and an expectation of logical reasoning is lacking.[19] Katyayana's statement beginning with "Even in an accusation consisting of several points," however, has a general scope that, after excluding a plea of denial falling within the scope of a restrictive text,[20] pertains to a plea of ignorance.

Is it not true that in the following text Katyayana states that in an accusation consisting of several points, when witnesses attest to either one part of the plaint or to more than what is stated in the plaint, then the entire plaint remains unproven?

> *In lawsuits pertaining to debts and so forth, which, for the most part, are clear-cut,*[21] *when the witnesses attest to a smaller or a larger amount, the charge is not proven indisputably.* (*KtSm* 396)

That being the case, how is it that when one portion is proven the unproven portion also becomes established?

We respond. The meaning of this text is as follows. When witnesses listed as providing the means of proof for the entire plaint that has been written down attest either to one portion of the plaint or to something more than what is in the plaint, then the entire charge remains unproven. Even in this case, because of the words "is not proven indisputably," a doubt, indeed, persists as before. Hence, there is room for other kinds of proof because of the restrictive rule: "Discarding subterfuge" (*YDh* 2.19). In a case involving violence and the like, however, when witnesses listed as providing the means of proof for the entire charge prove even one portion of the charge, then the entire charge is, indeed, taken as proven, (i) because, by just that much, cases involving violence and the like are proven; and (ii) because of the following text of Katyayana:

> In cases of adultery, violence, and theft, when witnesses attest to one portion of the charge to be proved, the entire charge is taken as proven. (*KtSm* 397)

4

It was stated above: "Immediately thereafter, the plaintiff should have the evidence he will use to prove what is alleged in his plaint written down" (*YDh* 2.7cd). Anticipating the question: "What is its means of proof?" he states:

> Document, enjoyment, and witnesses, it is declared, constitute evidence; and, in the absence of any one of these, one of the ordeals. (*YDh* 2.22)

….

Evidence is of two kinds: human and divine. Of these, human evidence is of three kinds: document, enjoyment, and witnesses…. Of these, document is of two kinds: decree and legal paper….

Surely it is legitimate to consider a document and witnesses as evidence, because, given that they both disclose words, they fall within the scope of verbal evidence. But how can enjoyment be considered evidence?

We respond. Enjoyment also, when it is provided with certain kinds of qualifications, indeed constitutes evidence, because it falls within the scope of inference or circumstantial inference. The reason for this is that such enjoyment, on the basis of its invariable concomitance, makes one either infer a cause such as purchase that gives rise to ownership or, if that is not possible, assume such a cause.

When even one of these three, documents and so forth, is unavailable, one of the ordeals, whose nature and classifications will be given below, is said to be evidence taking into account the caste, region, time, article, and the like.

From the above statement alone, one gathers that ordeal becomes evidence only when human evidence is unavailable, because the nature and authority of ordeals are gathered only from scriptural texts. And therefore, when two people, arguing with each other, come before a judge at the same time, the one depending on human evidence and the other on divine, it is the human evidence that should be accepted. Accordingly, Katyayana states:

> If one party presents human evidence and the other party divine evidence, the king should accept the human evidence and not the divine. (*KtSm* 218)

Even when human evidence is available only with regard to one central portion of the plaint, there too one should not resort to divine evidence. Take, for example, the plaint: “This man borrowed one hundred rupee coins on interest and does not return them.” In response to a plea of denial, the plaintiff says: “I have witnesses for the fact that he borrowed, but not for the amount and the particular rate of interest. Therefore, I will prove my case through an ordeal.” In such a case, there is no room for an ordeal, because, according to the maxim of proving one portion of the plaint, [22] the amount and the particular rate of interest also are thereby proved. Katyayana also states:

> When men are engaged in a dispute, one should accept the human evidence, even though it may cover only one portion of the plaint, and not divine evidence even if it covers the whole plaint. (*KtSm* 219)

With regard to the statement: “For those accused of violent crimes committed in secret, investigation through ordeals is proper” (*KtSm* 230), that too is meant as a restrictive rule applicable when human evidence is lacking. Also with regard to Narada’s statement:

> In the wilderness, in an uninhabited place, at night, inside a house, in the case of violence, and when one denies having received a deposit—in such cases[23] a divine mode of proof is

legitimate. (*NSm M* 2.30)

—this also refers to a situation when human evidence is not available.

Therefore, the general rule is that a verdict should be based on an ordeal only when human evidence is not available. We also see an exception to this:

> When litigation has been initiated with respect to a violent crime or verbal or physical assault, or in court cases arising from the use of force, the method of proof is witnesses or[24] ordeal. (*KtSm* 229)

Likewise, in the case of documents and the like also we find a restrictive rule given in some sources, such as:

> When something is said to be a bylaw of an association, guild, company, and the like, the means of proving that is a document, not an ordeal or witnesses. (*KtSm* 225)

> Likewise:

> The evidence in cases relating to the construction and extent[25] of gateways and paths, and to waterways and the like, enjoyment alone is the stronger evidence, not documents or witnesses. (*KtSm* 226)

And:

> Not giving what one promised to give, decisions relating to masters and servants, those relating to not delivering an article after it has been purchased, not paying the money after purchasing, gambling, and betting—when a dispute has arisen with regard to these, the means of proof is said to be witnesses, not an ordeal or a document. (*KtSm* 227–28)

When evidence is available to both sides and there is no criterion within the evidence to determine what is stronger and what is weaker, there arises the question: between the earlier and the later evidence, which is stronger? Therefore, he says:

> In all cases involving property, evidence relating to a later transaction has greater force. (*YDh* 2.23ab)

"In all cases involving property," that is, those relating to debts and the like, the evidence relating to a later transaction has greater force. When the evidence relating to a later transaction has been confirmed, the litigant presenting it wins, whereas, even if the evidence relating to an earlier transaction has been confirmed, the litigant presenting it is defeated. Here is an example. One person proves that another owes something by demonstrating that he took it. The other person proves that he does not owe it by demonstrating that he returned it. Here, as the taking and the returning have

been proven through evidence, given that returning is stronger, the litigant who states that he returned wins. Likewise, a man, after first taking a loan at 2 percent interest, at a later time agrees to an interest rate of 3 percent. In this case, even though there is evidence for both, the acceptance of the 3 percent rate has greater force. This is because the later transaction has been proven, and because the earlier transaction, by the fact that it is annulled, does not come into force. It is also said: "By the fact that it is annulled, the earlier transaction does not come into force, and that fact will establish the validity of the later transaction."[26]

He presents an exception:

> in the case of a pledge, gift, or purchase, however, evidence relating to an earlier transaction has greater force. (*YDh* 2.23cd)

In the three beginning with pledge, it is the evidence relating to an earlier transaction that has greater force. Here is an example. A man gives a field to one person as a pledge and receives some amount. He then pledges the same field again to another person and receives some amount. In this case, the field belongs only to the earlier person and not to the later. The same is true in the case of a gift or a purchase.

Is it not true that, because one loses ownership over an article the moment it is given as a pledge, it is clearly impossible for it to be given again as a pledge? Likewise, it is impossible to give or to buy what has already been given or bought. Therefore, this statement is meaningless.

We respond. Even in the absence of ownership, if through delusion or greed someone gives it again as a pledge and the like, then evidence relating to the earlier transaction has greater force. It is solely on this legal reasoning that this statement is based. No criticism, therefore, can be directed against it.

He will point out that enjoyment accompanied by certain attributes is authoritative. By doing so, he states that some kinds of enjoyment require other modes of evidence.

> When a man looks on without speaking up while his land is being enjoyed by someone else, he loses his title to it in twenty years; in the case of movable property, in ten years. (*YDh* 2 .24)

When a man looks on without speaking up—that is, without protesting: "This land is mine. You should not enjoy it"—while his land or movable property is being enjoyed by someone else who is unrelated to him, he suffers the loss of that land after twenty years, the loss being caused by twenty years of undisputed enjoyment. The loss of movable property, such as an elephant or horse, however, happens after ten years.

Surely this is improper. For ownership does not cease due to a lack of protest, because the notion that the absence of protest causes the cessation of ownership in the same way as gifting, sale, and the like is not found either in the world or in textual sources. Furthermore, ownership is not created by enjoyment for twenty years. The reason for this is as follows. Enjoyment is a means of knowledge relating to ownership, and a means of knowledge does not produce what is to be known. Further, this provision is not listed among the causes that create ownership, such as inheritance and purchase.[27] *Accordingly, in the following passage, Gautama lists only eight causes that create ownership, but not enjoyment: "One becomes an owner through inheritance, purchase, partition, possession,*[28] *and discovery; additionally, acceptance for a Brahman, conquest for a Kshatriya, and wages for a Vaishya and a Shudra"* (*GDh* 10.39–42).

It is not correct, further, to say that this very statement teaches that enjoyment for twenty years

is the cause that generates ownership. This is because ownership and causes of ownership are not to be learned just from textual sources, since they are well known in the world. And this will be dealt with more fully in the topic of partition. Gautama's statement, however, is meant to provide a restrictive rule.[29]

Furthermore, the following statement contradicts the view that enjoyment without title causes ownership:

> *When, however, someone enjoys even for many hundreds of years a property to which he has no title, the king should punish that evil man with the punishment ordained for a thief.* (*NSm* 1.76*; Jolly 1889: 1.87)

And it is not correct to say that the statement "When, however, someone enjoys" refers to enjoyment done outside the presence of the owner, while the statement "When a man looks on without speaking up" refers to enjoyment done in his presence. The reasons for this are: (i) the statement "When, however, someone enjoys" is made without qualification; (ii) Katyayana's statement: "In the case of farm animals, women, men, and the like, the man who seized them or his son should not place evidentiary import on enjoyment: that is the settled dharma" (KtSm 316); (iii) in the case of enjoyment in the presence of the owner, loss is impossible, given the lack of a cause for that loss.

And one should not reason in the following manner. In the case of pledges, gifts, and purchases, evidence relating to an earlier transaction has greater force. Therefore, as an exception to this rule, the current text declares that evidence relating to an earlier transaction has greater force when that evidence is connected, in the context of land, with twenty years of enjoyment and, in the context of movable property, with ten years of enjoyment. This is because in the case of these the very evidence relating to earlier transactions is in reality impossible, for only things that one owns can be pledged, given, or sold. And one does not have ownership of what has been pledged, given, or sold. A text of recollection, moreover, enjoins punishment for giving or selling anything that one does not own:

> *The man who accepts what should not be given and the man who gives what should not be given, both should be punished like thieves, and they should be made to pay the highest seizure fine.*[30]

Likewise, if this verse contained an exception to the three beginning with pledge, then it would be impossible for the next verse (*YDh* 2.25) *to present an exception to this verse in the case of pledges, boundaries, and the like.*

Therefore, the loss of land and the like is totally unwarranted. Nor is there a loss of the lawsuit. For this reason, Narada has declared that the loss of the lawsuit is created by the absence of reasons for indifference and not by the absence of the property:[31]

> *When the time given above*[32] *has elapsed, a lawsuit brought by someone who has shown indifference and has stood there silently will not succeed.* (*NSm* 1.71)

Likewise, Manu also has shown that the loss comes about through a judicial proceeding and not factually:

> *If something is enjoyed within his own locality and he is neither mentally incapacitated nor a minor, he loses through a judicial proceeding; the one who enjoys it is entitled to that property.* (*MDh* 8.148)

The loss through a judicial proceeding is as follows. The one who is enjoying will say, "This man is not mentally incapacitated or a minor, i.e., a child. In his presence I enjoyed this for twenty years without objection. With regard to this, there are numerous witnesses. If I was enjoying illegally what he owned, then why did he remain indifferent for this amount of time?" And to this, that man will not be able to present a reply. Even so, a judicial proceeding based on facts will, without doubt, take place, because of the rule: "Discarding subterfuge, the king should conduct judicial proceedings in accordance with the facts" (*YDh* 2.19).

Now, there is this view. Even though there is neither the loss of property nor the loss of the lawsuit, nevertheless, when someone sees but does not protest, there is a danger of the loss of the lawsuit. Consequently, to prevent this he teaches that one should not remain silent.

This is also not true, because enjoyment during the time given in this text of recollection does not create a danger of loss. If the intention was to point out that one must not remain silent for a particular length of time, then the mention of twenty years would be unintended.

Now, it may be argued that twenty years is mentioned in order to remove objections arising from any flaw in a document. Accordingly, Katyayana states:

> *When a property of a competent person is enjoyed in his presence on the strength of a document, after the lapse of twenty years that document becomes free of any flaw.* (*KtSm* 299)

That also is not true, because that would make the exception with regard to pledges, boundaries, and the like (*YDh* 2.25) *inapplicable, given that the removal of objections arising from any flaw in a document after twenty years applies equally in the case of pledges and the like. Accordingly, Katyayana states:*

> *Now, when a pledge has been indisputably enjoyed for twenty years, that pledge is established as valid by reason of that document, freed of any documentary flaws.* (*KtSm* 300)

Likewise:

> *When a decision is reached in a dispute over a boundary, the law requires a document defining the boundary to be executed. Any flaw in that document should be disclosed until twenty years have elapsed.* (*KtSm* 301)

This also refutes the statement: "in the case of movable property, in ten years" (*YDh* 2.24d). *Therefore, a legally sound*[33] *meaning of this verse must be presented.*

To this we respond. What is intended in this verse is the loss of product, not the loss of the property, not even the loss of the lawsuit. So, for instance, even though the owner gets back the field legally after it has been enjoyed for twenty years without protest, nevertheless he does not get to recoup its products. This is because of his own fault in failing to protest, and because of this text. He does get to recoup the products even after twenty years, however, when it is enjoyed out of his sight,

because the text says: “When a man looks on,” and also when it is enjoyed in his presence and in spite of his protest, because the text says: “without speaking up.” If it is before twenty years, he gets to recoup the products even if they were enjoyed in his presence and without protest, because the text mentions twenty.

Surely, because ownership extends also to the products generated from the property, it is clearly improper for there to be a loss of the products.

We agree—if the product remains in its original condition insofar as the thing itself is not destroyed, for example, an areca nut palm, jackfruit tree, and the like grown on the property.[34] When, however, what it produced has been destroyed by its enjoyment, then ownership is destroyed by the very fact that the thing itself has been destroyed.

> When, however, someone enjoys even for many hundreds of years a property to which he has no title, the king should punish that evil man with the punishment ordained for a thief. (*NSm* 1.76*; Jolly 1889: 1.87)

The conclusion arrived at by this text is that, after calculating how much it would have fetched if sold, he should pay an equivalent amount, like a thief. To this conclusion, an exception is made in the text: “he loses his title to the land in twenty years” (*YDh* 2.24b). The punishment by the king, however, remains in effect even after twenty years, because the enjoyment was carried out without title, and because we find no exception to this mentioned.

Therefore, it is established that after the lapse of twenty years the owner does not obtain a product that has been destroyed, both because of the owner’s own fault in remaining indifferent and because of this text. This also explains the provision: “in the case of movable property, in ten years.”

He gives an exception to the above rule:

> —with the exception of a pledge, a boundary, an open deposit, and the property of the mentally incompetent and children, as well as a sealed deposit, and the property of the king, women, and Vedic scholars. (*YDh* 2.25)

….

In the case of a pledge and so forth, no loss of the increase takes place even when someone “looks on without speaking” for over twenty years in the case of land and for over ten years in the case of movable property. This is because the above kind of fault committed by the man is absent, and because in each case it is possible to identify a reason for his indifference. So, for example, in the case of a pledge, the man commits no fault even when he remains indifferent, given that the enjoyment of the pledge is an essential attribute derived from the very nature of a pledge. In the case of a boundary, showing indifference is appropriate because a boundary can be easily ascertained by means of markers such as husks, charcoal, and the like laid down long ago. In the case of an open deposit and a sealed deposit, showing indifference is appropriate because its enjoyment is prohibited, and because, in the event it is enjoyed in contravention of the prohibition, he will get the product along with interest. Showing indifference is quite proper in the case of the mentally incompetent and children, simply because of the fact that they are mentally incompetent and children; in the case of the king, because he is preoccupied with numerous obligations; and in the case of women, because of ignorance and diffidence. In the case of Vedic scholars, showing indifference is quite proper because they are preoccupied with studying and teaching the Vedas, investigating their meaning, and putting them into practice.

Therefore, in the case of a pledge and so forth, there is never a loss of product when it is enjoyed

within sight and without protest, because in every case one can identify a reason for showing indifference.

5

It has been established that, when a litigant in a lawsuit dies before a verdict has been rendered, the lawsuit does not come to an end. Even when a verdict has been rendered in a lawsuit and the litigant is alive, sometimes the lawsuit continues and sometimes it does not. To establish the legal principle with respect to this, he states the relative power of those who try lawsuits.

> Officials appointed by the king, and associations, guilds, and families—of these, each preceding one should be recognized as having greater authority with respect to legal proceedings among men. (*YDh* 2.30)

….

This is what is being said. When officials appointed by the king have rendered a verdict in a lawsuit, even if the defeated party is dissatisfied, believing that the case was judged wrongly, nevertheless he cannot have that lawsuit retried in an association and so forth. Likewise, also when an association has rendered a verdict, there is no appeal to a guild and so forth. Similarly, when a guild has rendered a verdict, there is no appeal to a family. On the other hand, when a family has rendered a verdict, an appeal to a guild and so forth is possible. When a guild has rendered a verdict, an appeal to an association and so forth is possible. And when an association has rendered a verdict, an appeal to officials appointed by the king is possible.

Narada, furthermore, states that even when officials appointed by the king have rendered a verdict in a lawsuit, it is possible to appeal to the king:

> Families, guilds, companies, an appointed official, and the king are the venues for judicial proceedings; each following one has greater authority than the preceding. (*NSm M* 1.7)

In this kind of appeal to the king, furthermore, pertaining to a case with a wager where a verdict was rendered by previous assessors, if the man claiming that his case was judged wrongly loses his case before the king assisted by other assessors, then he should be punished. If he wins, however, the appointed assessors should be punished.

13.2 DEVANNA BHATTA

(See headnote to ch. 8.3.)

Devanna Bhatta’s analysis of legal procedure (*vyavahra*) is long and detailed, running to 773 pages in Srinivasacharya’s edition. His scholarly interest—and perhaps his personal and practical concern, if he was a judge or jurist—in matters of law and legal process are palpably evident. As already noted, Devanna was the most accomplished writer of legal digests (*nibandha*) during the medieval period.

In this section I have selected some of the most salient parts of Devanna’s text on legal procedure, covering the major aspects from the initial filing of the charges to the verdict and the appeal process (#3–10), as well as the more theoretical issues relating to the very nature of a lawsuit and its classification (#1–2). One long portion I have omitted deals with the three kinds of evidence:

documents, witnesses, and ordeals. Some of this material has already been given in the previous chapters, and Devanna's discussion of them is far too long to be included here.

This is perhaps the most detailed analysis of three central steps in court procedure: plaint, plea, and the determination of the party with the burden of proof. A brief comparison of Devanna's section on the plaint with those of two other major legal digests, the *Ktyakalpataru* of Laksmidhara (twelfth century C.E.), the earliest digest available to us, and the digest specifically on legal procedure, *Vyavahracintmai* of Vacaspati Misra (fifteenth century C.E.) is, at least anecdotally, revealing. Devanna cites 61 verses from legal codes and has 112 lines of comments and analysis. Compare that to Laksmidhara, who cites 32 verses and has just 47 lines of commentary, consisting mostly of glosses on words, and to Vacaspati Misra, who cites 28 verses and provides 31 lines of commentary. The same pattern is true in the analyses of other areas of legal procedure. Devanna Bhatta's *Moonlight of Texts of Recollection* (*Smticandrik*), then, is the most complete analysis of legal procedure ever produced in ancient or medieval India.

1. The Nature of Lawsuit and Legal Procedure

[*Vyavahraka*, pp. 1–3]

At the outset, we describe the nature of a legal procedure.[35] On this, Brihaspati states:

> In the beginning, men were staunchly committed to dharma and refrained from causing injury. Lawsuits have been declared for those who are under the sway of greed and hatred. (*BSm* 1.1.1)

The meaning of this has been elucidated by Narada:

> When men were totally fixed on dharma and spoke the truth, there were no lawsuits, and no hatred or envy. Once dharma vanished, lawsuits were proclaimed for men. (*NSm M* 1.1–2)

The meaning is that "lawsuits," namely, disputes relating to such matters as the nonpayment of debts, "were proclaimed for men." Katyayana, likewise, states:

> When what is called dharma, which can only be established with effort, has been violated and fullness of legal reasoning takes effect, the dispute that is grounded on the plaint that needs to be established is called a lawsuit. (*KtSm* 25)

This is its meaning.[36] Once the category called dharma—which can only be established with effort consisting of telling the truth, not causing injury, steadfastness, and the like—has been violated through greed, hatred, and the like, when the full unfolding of the legal reasoning is made in cases such as the nonpayment of a debt in order to secure the payment, and in cases such as corporate dharma in order to prevent rival dharmas, a dispute among men grounded on the plaint that needs to be established is called "lawsuit." For this very reason, Harita states:

> Where the securing of one's property and the prevention of rival dharmas is done through legal reasoning, it is called "lawsuit."

The meaning is that a dispute relating to the denial with respect to property and a dispute among ascetic sects about their respective corporate dharma also is a lawsuit. One should not, however, assume that disputes relating to theft, assault, and so forth do not constitute lawsuits. For this reason, Yajnavalkya states:

> If someone who has suffered an injury at the hands of others in a manner contrary to texts of recollection or normative practice reports it to the king, it becomes a subject of litigation. (*YDh* 2.5)

Katyayana also states:

> If a teacher beats a pupil in anger with something other than a cane and inflicting severe pain, the pupil's father may initiate litigation on behalf of the pupil. (*KtSm* 794)

Brihaspati also states:

> If an employer pays his employees wages for the work they are doing, and the employees fail to do the work, then litigation may ensue. If someone causes injury or fails to give what should be given, these are two occasions for litigation; the paths these two take are manifold. (*BSm* 1.1.2–3)

Usanas also states:

> Whenever someone reports to the king some matter in the context of a lawsuit, that is declared to be a subject of litigation, a subject that is of eighteen kinds.

In this manner, one should understand that the essential meaning of the statements of Yajnavalkya and others is as follows: a litigation whose topic is any one of the eighteen kinds of topics is a lawsuit. For this very reason, Narada states:

> Nonpayment of debts, sealed deposits, partnership, resumption of a gift, breach of contract for service, nonpayment of wages, sale without ownership, nondelivery after a sale, cancellation of a purchase, nonobservance of conventions, land disputes, relations between a man and woman, partition of inheritance, violence, verbal assault, physical assault, gambling, and miscellaneous—these, texts of recollection declare, are the eighteen feet. (*NSm M* 1.16–19)

The meaning is: a lawsuit is said to be one whose topic is any one of the eighteen topics beginning with nonpayment of debts. One should not argue, moreover, that the statement "these are said to be the eighteen subjects" stands contradicted because of the statement in texts of recollection on lawsuits relating to other subjects such as open deposits. For this very reason, Narada himself states:

Another subdivision of these same, texts of recollection declare, amounts to one hundred and eight. Because the legal cases[37] of human beings vary widely, it is said to have one hundred branches. (*NSm M* 1.20)

Katyayana also states:

They are divided into eight thousand because of the division of the eighteen kinds of cases. (*KtSm* 29)

"Because of the division of…cases" means "because of the division of plaints." By necessary implication, this states that lawsuits are also divided into eight thousand. The statements "one hundred and eight" and "eight thousand" do not contradict each other because they are aimed at teaching that there are numerous kinds of legal procedures.

2. Classifications of Lawsuits

[*Vyavahraka*, pp. 20–29]

We have already stated that lawsuits are manifold on the basis of the difference of topics that are part of their very constitution. Now we present the classification of the same lawsuits based on a wager and the like. In this connection, Yajnavalkya states:

If the litigation includes a wager, however, then the defeated party must be made to pay. (*YDh* 2.18)

A wager is the money put up through pride, saying: "If I am defeated, I will give this much to the king." The use of the term "If" indicates also litigation without a wager. Thus lawsuits are of two kinds. Accordingly, Narada states:

One should know that there are two kinds of lawsuits: with an additional wager and without an additional wager. Where there is an extra wager stipulated in writing, it is one with an additional wager. (*NSm M* 1.4)

The meaning is this. When in a lawsuit, before the writing down of the plaint, both parties—or one of them—agree to a wager in addition to the fine, it is a lawsuit with an additional wager. Narada gives other classifications as well:

A legal procedure, it is said, has four feet, four bases, and four means, benefits four, extends to four, and produces four. It has eight limbs, eighteen feet, one hundred branches, three wombs, two kinds of accusation, two gates, and two paths. (*NSm M* 1.8–9)

Narada himself explains these varieties:

> Dharma, legal procedure, custom, and king's decree—these are the four feet of legal procedure, the subsequent ones annulling the prior ones.[38] (*NSm M* 1.10)

Surely, is it not true that it is plaint, plea, evidence, and verdict that constitute the feet of legal procedure and not dharma and so forth? So what is the reason for this statement?

We respond. The foot consisting of the verdict is of four kinds, depending on whether it is in accordance with dharma and so forth. Here the verdict is called by that term in accordance with which it was rendered. Therefore, it is indeed proper to describe it as consisting of four feet also in terms of dharma and so forth. Accordingly, Brihaspati states:

> A verdict in a doubtful case is said to be of four kinds: based on dharma, legal procedure, custom, and king's order. (*BSm* 1.1.18)

Katyayana gives the characteristics of all four kinds of verdicts:

> In a legal dispute where the perpetrator of the offense acknowledges his authorship and the owner of the property receives his property, the verdict is based solely on dharma. (*KtSm* 35)

"Offense" is causing injury and the like. "Authorship" means he committed it.

> When some text of recollection is presented by those implementing dharma[39] for the purpose of arriving at a verdict in lawsuits, it is said to be legal procedure. (*KtSm* 36)

The meaning is this. A verdict arrived at by following the plaint, plea, and so forth described in the treatises on dharma is called legal procedure.

> When a person practices something, whether it is dharma or adharma, because it is invariably practiced in his region, it is called custom. (*KtSm* 37)

The meaning is this. Given that he follows that custom, the verdict is called by the same appellation.

> When the king establishes a dharma that is not in conflict with treatises on law or with the usages of the region, it is a legal decree of the king. (*KtSm* 38)

The meaning of this is as follows. A verdict not in conflict with other authoritative sources and determined just by the king's deliberation is called king's decree. Here, Brihaspati states that each of these varieties is again twofold:

> Wise men have stated that each is of two kinds based on the differences of evidence. (*BSm* 1 .9.2)

The two kinds are also explained by Brihaspati himself:

> A verdict arrived at after properly investigating a lawsuit that has been scrutinized through reasoning and examined through oaths should be known as one based on dharma. When the defendant confesses, it is a verdict based on dharma, or when a person has been tested properly through ordeals: this is stated to be the second type. (*BSm* 1.9.3–4)

The meaning is this. A verdict arrived at by the pursuit of truth is the first type of verdict based on dharma. Without the pursuit of truth, a verdict arrived at by a plea of admission or by the authority of an ordeal is the second type.

> A verdict determined on the basis of evidence, however, is said to be one based on legal procedure. When it results from verbal trickery or an invalid plea, it is said to be the second type. (*BSm* 1.9.5)

The evidence intended here is the human, because a verdict based on ordeals is included with the category of verdicts based on dharma.

> A verdict arrived at through inference is said to be one based on custom. Experts in the science state that one arrived at according to the fixed practice of a region is the second type. (*BSm* 1.9.6)

Inference consists of a sign such as having a firebrand in the hand.[40]

> A verdict arrived at without evidence is said to be one based on the king's order. The other type is said to be when it does not conflict with the norms of authoritative treatises. (*BSm* 1 .9)

Vyasa has explained in detail the meaning of the phrase "without evidence":

> Document, witnesses, and enjoyment are said to be the three kinds of evidence. Wise men take inference and logical reasoning to be the cause.
> The fixed practice of a region established long ago is called custom. Truth, balance, and so forth, texts of recollection state, are oaths corresponding to the lawsuit.
> In the absence of these, however, wise men state that the king's order constitutes the verdict.

Is it then not true that Narada's statement, "the subsequent ones annulling the prior ones," becomes incoherent, (i) because, given that each preceding kind of verdict more closely corresponds to the truth, it is the prior ones that annul the succeeding ones; and (ii) because Yajnavalkya has stated: "Discarding subterfuge, the king should conduct judicial proceedings in accordance with the facts"? (*YDh* 2.19)

We respond. That is true, and as a general rule it is so everywhere. In some particular cases, however, it does happen that the subsequent ones annul the prior ones. Narada's statement applies to such cases. Here are examples. A certain eminent man, such as a man of royal birth, through folly in some way engages in an activity such as touching the king's wife or the like. And after doing it he enters a plea of denial out of fear for his life. There are also witnesses. They too, when questioned by the king, fearing that the man would be put to death, give false testimony: "He did not commit this act." When something like this happens, the guilt of the man who committed the crime is not established. Consequently, here dharma is annulled by legal procedure. And it is proper that dharma is annulled here, because witnesses are enjoined to speak an untruth in the statement: "One may clearly give false testimony in a case where a person of an upper class is subject to execution" (*YDh* 2.83).

On the other hand, a man, such as an Abhira, is accused by some person: "This man has committed adultery with another man's wife, and there are witnesses," and he responds: "What the witnesses have said is true. Nevertheless, I should not be punished, because I did this on the strength of custom. And the king has recorded this in the book."[41] When something like this happens, legal procedure is annulled by custom, because the punishment stipulated by legal procedure is annulled by means of custom. And in this case it is proper that it be annulled by custom, because of the statement:

> A lawsuit between individuals belonging to a village, a settlement of cow herders, a city, a guild, a caravan, or an army should be decided according to custom: so says Brihaspati.[42]

Custom also in some cases is annulled by an order of the king. A custom of this sort has been created: "No official of the king should enter the interior of a family's house." Then the king finds out that a certain lawbreaker has entered a house. The king then orders an official of his: "You should bring that criminal even by entering the interior of the house." In this case, even custom is annulled by a king's decree. This is because a king's decree has greater force than a custom, given the necessity of apprehending criminals. Having just this kind of issue in mind, Brihaspati also says:

> Where a verdict is reached based solely on an authoritative text, it is called one based on legal procedure; dharma is superseded by it.
>
> When a verdict is reached based on the fixed practice of the region or on inference, or following the opinion of tradesmen, it annuls legal procedure.
>
> When the king, discarding established practice, renders a verdict, that is the king's order. It annuls custom. (*BSm* 1.1.19–21)

We now pick up the thread of the original discussion.[43] In order to explain the four bases,[44] he states:

> Of these, dharma is based on truth, legal procedure on witnesses, custom on what is recorded in books, and decree is the king's order. (*NSm M* 1.11)

The term "witnesses" is used as a synechdoche for the kinds of evidence distinct from ordeals given in the treatises on dharma. "Books" refers to documents. He gives the four means:

It is said to have four means because it is to be achieved by the expedients beginning with conciliation.[45] (*NSm M* 1.12)

Because, when a plaintiff and defendant are in disagreement, the resolution takes place by expedients such as conciliation—that is what is intended. He gives the four that it benefits:

Because it protects the four orders of life, it benefits four. (*NSm M* 1.12)

"Four orders of life" is meant to indicate also the social classes. He give the four to whom it extends:

It is said to extend to four because it extends in quarters to the perpetrators, witnesses, assessors, and the king. (*NSm M* 1.13)

The meaning is that, depending on whether it is adjudicated properly or improperly, the resulting dharma or adharma extends in quarters to the perpetrator and others.[46] He gives the four that it produces:

Because it produces these four: dharma, success, fame, and attachment of the people, it is said to produce four. (*NSm M* 1.14)

Attachment of the people refers to the affection of the people. He gives the eight limbs:

The king along with his officials, assessors, authoritative treatise, accountant, scribe, gold, fire, and water are said to be its eight limbs. (*NSm M* 1.15)

We will explain later on, however, the use of these. The explanation of the eighteen subjects and one hundred branches dealt with in the previous two sections should be reviewed here. He gives its three wombs:

Because it originates from lust, hatred, and greed, it is said to have three wombs. These three generate legal disputes. (*NSm M* 1.21)

"As appropriate in each case" should complete the statement.[47] He gives the two kinds of accusations:

A lawsuit, however, should be recognized to have two kinds of accusations, in terms of an accusation based on suspicion and an accusation based on fact. (*NSm M* 1.22ab)

He gives examples of these:

Suspicion, however, comes from association with bad people, and fact from finding such things as stolen goods. (*NSm M* 1.22cd)

Through association with bad people such as gamblers and thieves, suspicion of theft and the like falls even on a good man. "Finding such things as stolen goods" refers to the recognition of an evidentiary sign such as a portion of what was stolen or to directly seeing them. Association with bad people is given simply as an example, because it is possible to entertain a suspicion with regard to a deposit and the like when there is an association with even rich people who are good. Therefore, the above is not a definition of an accusation based on suspicion. He gives its two gates:

Because it is connected with two sides, it is said to have two gates. Of these, the initial charge is one side, and the plea to it is the opposing side. (*NSm M* 1.23)

"Gate" means the process of commencing the lawsuit. He gives the two paths:

Because it follows fact or subterfuge, it is said to have two paths. What is based on truth is fact, while what is stated erroneously is subterfuge. (*NSm M* 1.24)

Harita also gives some classifications:

It has one root, two origins, two trunks, and two fruits.

Katyayana, however, explains these:

What the plaintiff has reported is the root of the case to be proven. Not giving what has to be given and injury are said to be the two origins. The treatise on dharma and the treatise on political science are said to be the two trunks. The two fruits are said to be victory and defeat. (*KtSm* 30, 32)

Another classification, likewise, has been given by Katyayana himself:

Plaint, plea, deliberation, the foot consisting of evidence: thus it has been said to have four feet. (*KtSm* 31)

"Deliberation" refers to the consideration by the judge and others regarding the person on whom the legal burden of presenting evidence falls, when the two parties are continuing their dispute even after the plea has been accepted. Evidence consists of means of proof such as documents; presenting it constitutes the foot consisting of evidence. Insofar as they form part of the concluding section of the legal procedure that includes the dispute, burden of proof and evidence also form part of legal procedure. This is the reason for the statement: "it has been said to have four feet."

For the very same reason, the author of the *Sagraha* states that the concluding section also is part of legal procedure:

> When human beings engage in disputes pertaining to their interests, the legal disposition based on statements is said to be legal procedure.[48]

Some argue that "deliberation" is the consideration resulting in a verdict of victory or defeat after the presentation of evidence, a consideration that removes doubts about whether the evidence was fallacious.[49] In this view, what is intended to be stated is only the number of feet and not their sequence, because here the foot consisting of deliberation becomes the fourth.

With regard to what is stated by Yajnavalkya, however:

> If that is successful, he obtains success; the opposite, if it is otherwise. (*YDh* 2.8)

—here also, the term "success" denotes deliberation that results in success. It does not, however, consist of the determination of victory or defeat, because that is present even in a plea of admission, and because it would result in contradicting the text: "In cases of admission, it has two feet" (*KtSm* 245). Therefore, the statement of Yajnavalkya has exactly the same meaning as that statement of Katyayana.

Others, however, explain this statement as having the same meaning as this statement in a text of recollection:

> Plaint, plea, evidence, and proving what has to be proven—when with these following sequentially it is cast in four parts, it is said to have four feet. (*DhKo* I: 18)

They also maintain, however, that this does not conflict with the statement: "In cases of admission, it has two feet," given that the foot consisting of proving what has to be proved is lacking because in a plea of admission the means of proof is not indicated and what is alleged in the plaint does not have to be proved. In the context of this view, a text of recollection points out also the sequence of the feet:

> There, however, the first foot is the plaint; the second is the plea; the next foot is evidence; and the fourth is said to be the verdict. (*DhKo* I: 18)

3. Venues for Trials

[*Vyavahraka*, pp. 29–42]

On this point, Brihaspati states:

> Although one, legal procedure has been presented, however, as manifold by the wise. The one who renders the verdict there is the king and a Brahman who is learned. (*BSm* 1.1.67)

The Brahman has the title of judge.[50] Accordingly, Brihaspati himself states:

He is the judge (*prvivka*) because he asks questions and counterquestions, and because he speaks at the outset and affectionately.[51] (*BSm* 1.1.69)

The term *pr* comes from the fact that he questions the plaintiff and the defendant. The term *vivka* comes from the fact that he especially pronounces the verdict. The meaning is that his title is derived etymologically.[52]

Narada also, while explaining how the Brahman should be learned, elucidates this title through another method:

Who knows well the eighteen subjects, who grasps their eight thousand subdivisions, who is an expert in disciplines such as critical thinking, and who has mastered the Vedic texts and texts of recollection—because he examines (*pcchati*) the dharma relating to the dispute and investigates (*vivecayati*) the issue under consideration, he is said to be the judge (*prvivka*). (*DhKo* I: 43)

In this way, the duties of the judge also have been stated by both these texts through what is implied by those very etymological explanations of the term. Further, Narada states this explicitly:

As a doctor extracts a dart from the body using surgical instruments, so a judge should extract a dart by using legal procedure. (*NSm M* 3.15)

[section from page 30, line 5 until page 39, line 13 is omitted]

Bhrigu, however, states also the lower venues for trials.[53]

Bhrigu has declared ten venues, as well as five, for lawsuits through which litigants who have got into a dispute may arrive at a verdict. (*DhKo* I: 55)

Bhrigu himself, furthermore, has pointed out these fifteen venues:

Forest people should have recourse to their own people; traveling traders to other traveling traders; martial people to other martial people; and in the case of a village, those living in both.[54] Heads of families, leaders of traveling traders, and inhabitants of cities and villages may select a venue that they prefer with the agreement of both parties.

Village, citizenry, company, guild, and expert in the four sciences; groups, families, heads of families, appointed officials, and the king.

In this passage, the first five venues are meant only for specific groups such as forest people. When there is a legal dispute among people constituted as a village, the verdict is rendered by residents of the neighborhood. Heads of families, leaders of traveling traders, and inhabitants of cities and villages may select a venue that the plaintiff and defendant have agreed to without regret. The ten beginning with village are common venues. "Village" refers to people constituted as a village. "Citizenry" refers to a collection of city dwellers. "Company" is a collection of families, because of Katyayana's statement: "A collection of families, however, is said to be a company."

"Guilds" are the eighteen lower castes, beginning with washermen.[55] "Expert in the four sciences" is someone who is versed in the four sciences, beginning with critical thinking.[56] The word "and" in "and expert in the four sciences" is used in order to combine the expert in the four sciences with other learned individuals, because Pitamaha prohibits a single individual from expounding dharma: "Therefore, a single individual, even if he knows the rules, should not make pronouncements about dharma." "Groups" are those beginning with companies, because of Katyayana's statement:

> Companies, ascetic orders, associations, bands, and guilds, as well as others formed into organizations—they have the name "group" according to Brihaspati. (*KtSm* 682)

Brihaspati is mentioned in order to show that the use of this name to refer to companies and so forth was well known already in earlier times. "Band" is an association of men who carry arms, because Katyayana himself has said: "When men who carry various arms come together, however, they are called bands" (*KtSm* 678). "Families" are those belonging to the same lineages as the plaintiff and the defendant. "Heads of families" are some elders born in the same lineages as the plaintiff and the defendant. "Appointed officials" are the three assessors along with the judge. "King" implies that he is accompanied by Brahmans.

In this connection, Brihaspati states:

> There are, it is stated, four kinds of court: stationary, nonstationary, provided with the royal seal, and directed by authoritative texts; there are also the same kinds of assessors. (*BSm* 1.1 .57)

A court in the three venues beginning with forest people is nonstationary, because they, for the most part, tend to travel to other regions. Because that mobility is absent in the ten venues beginning with "those living in both," they are stationary. The venue of appointed officials, on the other hand, is the one provided with the royal seal, because it is associated with an overseer who carries the royal seal. The venue of the king, however, is directed by authoritative texts, because it is governed by authoritative texts. Brihaspati himself, moreover, has stated this classification of courts:

> The stationary is in a city; the nonstationary, called the mobile, is in a village; the one provided with the royal seal is connected with the overseer; and the one directed by authoritative texts is connected with the king. (*BSm* 1.1.58)

"Overseer" is the judge, because he is invested with the authority to try cases. From this, moreover, we gather that the king should place his own seal in his hand in order to summon the defendant. Of these, the stationary and nonstationary courts should be constituted by the very parties in search of a legal decision by means such as making a petition, offering money, and showing respect. The reason is that such a court is not established through the directive of either a treatise on dharma or the king.[57] A court provided with the royal seal and the one directed by legal texts are constituted by the king himself, because they fall within his own authority. Consequently, the simple fact that those in search of a legal decision approach the court does not imply the constitution of that court.

In this connection, Pitamaha states that the court directed by authoritative texts is superior to the other courts:

When cases that have been tried in earlier venues, whether they were tried according to dharma or not, are appealed to the venue of the king, those cases do maintain the earlier case.

"Earlier case" means the plaint. The phrase "venue of the king" is used as a synecdoche to include superior venues. For this reason, Pitamaha himself states:

What has been decided in the village may be appealed to the city. What has been decided in the city, however, may be appealed to the king. When something has been decided by the king, whether it is decided properly or improperly, there is no further appeal.

Narada also states:

Families, guilds, companies, an appointed official, and the king are the venues for judicial proceedings; each following one has greater authority than the preceding. (*NSm M* 1.7)

4. Beginning of the Trial

[*Vyavahraka*, pp. 70–80]

On this, Manu states:

Ascending the seat of dharma with his body covered and his mind composed, he should pay homage to the guardian deities of the world and open the trial. (*MDh* 8.23)

"At the time prescribed by authoritative texts" completes the sentence. Accordingly, Katyayana states:

At the proper time he should ask the plaintiff as he stands before him bowing: "What is your case? What is your grievance? Speak, man, and do not be afraid." (*KtSm* 86)

"What is your case?" is a question aimed at finding out the refusal to give what is owed, and "What is your grievance?" is aimed at finding out the injury. Likewise, in order to find out the perpetrator, place, time, and reason of both those, Katyayana himself says that the presiding officer of the court should ask four questions:

By whom? Where? When? Why?—going to the court, he should ask in this manner. (*KtSm* 87)

When he is so questioned, the plaintiff, then, should apprise him of the entire complaint. Accordingly, Yajnavalkya states:

If someone who suffers an injury at the hands of others in a manner contrary to texts of

recollection or normative practice reports it to the king, it indeed is a subject for litigation. (*YDh* 2.5)

This passage implicitly states that it is the plaintiff who should report a wrong done to him by another person. The word “If” here is intended to show that the reporting should be done because the accuser wants to do so and not by the command of the king. The plural “of others” is used as a synecdoche, and for that very reason Katyayana has presented the question regarding the perpetrator of the crime with a word in the singular: “By whom?” The use of “someone who has suffered an injury” is intended to point out the man entitled to initiate litigation, but not the man actually filing charges. The reason is that Katyayana has asserted that even an appointed representative may file charges in a lawsuit:

> Whether a man has been appointed by the plaintiff or deputized by the defendant, when he argues the case of the other, the victory and the defeat affect just the two of them. (*KtSm* 91 =*NSm M* 2.22)

The term “appointed” is used as a synecdoche to indicate also his own people. For this very reason, Pitamaha states:

> If the father, brother, friend, cognate, or affine appears, the lawsuit may then proceed.
> When a man gets someone to do something through an appointment, that should be regarded as done by the man himself. Texts of recollection state that it cannot be invalidated.

Thus, we must determine that the initial charges should be filed by the plaintiff or by a man belonging to his own people, and not by anyone else. For this very reason, Narada states:

> When someone who is not a brother, father, or son, or acting under an appointment, acts as a litigant in another man’s lawsuit, he is subject to punishment, as also someone who speaks falsely in legal proceedings. (*NSm M* 2.23)

Katyayana also states:

> Slaves, employees, pupils, appointed persons, and relatives should not be punished when they speak as litigants. Anyone other than these is subject to punishment. (*KtSm* 92)

Likewise, Usanas states that the person filing the initial charges also, when he speaks in an impolite manner during the time of filing charges, should be punished:

> When a man speaks with a weapon in hand, without an upper garment, with his hair loose, while seated,[58] using the left hand,[59]or wearing a garland, he is subject to punishment. (= *KtSm* 99)

So, the intent is that a person should not speak in such a condition.

Thereafter, the scribe should write all that he states on a wooden board or the like. Accordingly, Narada states:

> Enraged by one of the causes such as passion, when he says something in the court, he should say "Yes" and write down all that the plaintiff has said on a wooden board or the like. (*NSm M* 2.18)

"In the court" means in the presence of the king and the like. When it has been written down, and if it is not something that does not deserve to be investigated, such as: "I loaned him money in a previous birth, and he refuses to return it," then, in order to summon the defendant, he should carry out such things as the giving of the seal. Accordingly, Katyayana states:

> When he has been so questioned, the assessors along with the Brahmans should consider what he says. If the suit is legally valid, then he should entrust the seal to him or dispatch an assistant. (*KtSm* 87–88)

"To him," that is, to the man filing the charges. "Assistant" is the bailiff. "Legally valid" means appropriate. The sentence should be completed thus: "for the purposes of summoning the defendant." Accordingly, Brihaspati states:

> When an accusation has been made against someone based either on facts or on suspicion, the king should summon that very man either through the seal or by means of an assistant. (*BSm* 1.1.141)

The intention is that only he is eligible to make a plea. For this very reason, Katyayana states:

> The eligibility rests with the accused, and not with an outsider who is unconnected. (*KtSm* 90)

The meaning is that an outsider who is not the accused is not eligible to enter a plea in that lawsuit, because he has no connection to it. Therefore, an outsider's role as pleader[60] comes about not from himself but for the following reasons and not any other: the accused has installed him in the role of defendant; or he has been presented to the judge by the defendant as someone who would carry out his lawsuit; or the plaintiff has willingly accepted him in the role of defendant. This is stated by Katyayana himself:

> Even another person is permitted when he is made his substitute by the accused. Another outsider who is presented to the court president by him should be regarded as the substitute, as also someone agreed to by the plaintiff himself. (*KtSm* 89–90)

This is its meaning. Even another person, that is, someone unconnected to the lawsuit, when he is made the substitute, that is, made the defendant, he has been recognized by Manu and the like as

the one who presents the plea. Likewise, another, that is a second person, should be so recognized who, being an outsider unconnected to the lawsuit, is presented to the court president, that is, to the judge, by the accused; or else, someone agreed to by the plaintiff himself, that is, accepted as the defendant. One should understand that the assumption of a defendant's role by someone not eligible to it pertains to a situation where the one so eligible suffers from a disability such as illness, because in such a situation it is difficult for the eligible one to carry out that role in person. For this very reason, Brihaspati states:

> In the case of a person who is timid, an imbecile, insane, aged, a woman, a child, or sick, a relative may present the plea, or else another man who has been appointed. (*BSm* 1.1.142)

For the same reason, moreover, Harita and others in their texts of recollection have prohibited the summoning of such individuals:

> The king should not summon the following: a person who is indisposed, a child, aged, in dire straits, or occupied with religious rites; whose affairs would be neglected; who has fallen into misfortune; who is occupied with royal duties or a festival; and who is intoxicated, insane, feeble-minded, afflicted, or a dependent.

"Indisposed" means sick. "In dire straits" means someone who is facing misfortune. "Occupied with religious rites" means someone engrossed in performing daily or occasional rites. "Whose affairs would be neglected," however, is someone whose affairs would suffer severe damage if he were to come. "Who has fallen into misfortune" is someone suffering the pain resulting from a cause such as the loss of a beloved. "Intoxicated" is someone whose mind is stupefied by an inebriating substance such as *Dhuttra*.[61] "Insane" due to evil spirits, bile, and the like. "Feeble-minded" means a person who pays no attention to anything. "Afflicted" means a person stricken by poison and the like. The use of the term "dependent" is meant as a synecdoche to include also women who are not independent.

[section from p. 74, line 4 until p. 75, line 5, is omitted]

Therefore, it is settled that the rule regarding a substitute is applicable only in the case of people who are indisposed and so forth.

When, however, the case cannot be resolved through the substitute offered by an indisposed person, then summons should be issued against even persons such as the indisposed. Accordingly, Harita states:

> After ascertaining the place and time, and the relative gravity of the lawsuits, the king should have even the indisposed and the like summoned, bringing them in vehicles at a gentle pace.

When, however, the accusation concerns serious matters, then it is imperative that the accused himself be summoned, because in such a case it is forbidden to have a substitute. Accordingly, Katyayana states:

> An alternate cannot be given in the murder of a Brahman, drinking liquor, theft, and having sex with one's elder's wife, as also in other litigations concerning abhorrent acts.[62] (*KtSm* 93)

Katyayana himself gives also litigations concerning abhorrent acts:

> Killing a human being, theft, adultery with another's wife, eating forbidden food, abducting or deflowering a virgin, assault, counterfeiting, and treason against the king—for these an alternate cannot be given for either the plaintiff or the defendant. (*KtSm* 94–95)

"Alternate" is a substitute for the plaintiff or the defendant. He should not be accepted under any circumstances in such kinds of serious lawsuits. For this very reason, Harita states:

> In serious lawsuits, after looking into the accusation, the king should summon even those living in the forest, such as renouncers, without arousing their anger.

Here, by saying "without arousing their anger" he conveys that in the case of ordinary people the summons may be issued even with a harsh voice. This is made clear, moreover, by Vyasa:

> A person who inflicts an injury or does not return what is owed when it is requested because of his evil disposition should be dragged off on the orders of the king.

Brihaspati prescribes a fine on anyone who does not come even on the orders of the king:

> When, however, a man who is summoned does not come because of arrogance, banking on the power of his relatives, a fine should be devised for him corresponding to the accusation. (*BSm* 1.1.144)

Katyayana also says:

> When someone, although able, treats the royal decree with contempt, however, the king should imposed on him a fine according to the process given in the rules.
>
> In the case of a minor affair, he should be fined fifty; in an affair that is middling, a minimum of 200; and in serious cases, always a minimum of 500. (*KtSm* 100–101)

These figures refer to Paa coins, because Katyayana himself states:

> Whatever fine has been carefully set for an offense, it should be assumed to be paid in Paas or its equivalent to the king. (*KtSm* 102)

[section from p. 76, line 18 until p. 77, line 8 is omitted]

In this manner, when the accused has been brought by whatever means possible, he should place him along with the plaintiff in front of the court or in another chosen location. Accordingly, Pitamaha states:

> The accused, along with the plaintiff, should be placed in front of the court or in another preferred location; otherwise he would not be reliable.[63]

The sense is that one should place him in a location where, when he stands, he will not be able to hide incriminating signs.

Thereafter, when questioned by the king, the accused should report what happened in a way that would favor him, because it is not possible to search for the truth merely on the basis of the report made by the plaintiff. For this very reason, while dealing with the method of investigating what happened, Manu states:

> by means of voice, color, expression, bearing, eyes, and gestures. (*MDh* 8.25)

Even in a fraudulent lawsuit, after writing down the plaint, in order to ascertain its fraudulent nature, what the accused says happened should be gathered from his own mouth. Once it is determined that the two are engaging in deceitful litigations, thereafter the trial procedure tracks that deceit. Therefore, it must be recognized that the accused also presents a report of what happened.

Yajnavalkya states what should be done after determining that the two litigants are engaged in deceit:

> From each of the two parties a surety should be secured capable of satisfying the verdict. (*YDh* 2.10)

The meaning is as follows. "Verdict" refers to obtaining without effort the money resulting from proving the case and the money resulting from the fine. The official conducting the trial should take a surety capable of carrying that out from both the plaintiff and the defendant. In this regard, Katyayana points out persons who should be avoided:

> The following should never be accepted to carry out the functions of a surety: master, enemy, someone appointed by the master or under arrest, someone who has been fined, those under suspicion, heir, pauper, those living until the end, someone engaged in royal business, men who have renounced, someone unable to pay the creditor and an equal sum as a fine to the king, and someone who is unknown. (*KtSm* 114–16)

"Those under suspicion" are public sinners. "Those living until the end" are perpetual Vedic students. "An equal sum," that is, a sum equal to the amount that was the subject of the litigation. This is meant to refer implicitly to the prescribed fine. Katyayana himself states what must be done if a litigant is unable to give a surety for the lawsuit:

> Now, if a litigant entitled to file a lawsuit does not have a surety, he should be guarded at the end of the day, and he should pay a stipend to the emissary. (*KtSm* 117)

"Emissary" means the bailiff.

Further, Katyayana himself states that only a litigant who has been made to give up the article he has taken should be permitted to proceed with the lawsuit:

> The king should not permit a man who has taken the article to proceed with the lawsuit; either it should be given to him or deposited with another. (*KtSm* 120)

"Another" means an impartial person….

Katyayana himself, further, has given also the order in which the accuser and so forth are to speak:

> Of these, the accuser should speak at the outset; immediately after him the accused; when those two have finished, the court officials; and after that the judge. (*KtSm* 121)

"Speak at the outset": the meaning is that he should present the plaint. Likewise, Narada states:

> Those who know the law state that the person who first lodges the report with the king with respect to an order, document, record, decree, pledge, paper, sale, or purchase should be regarded as the one who should present the argument first.[64] (*NSm M* 2.38)

The meaning is that in every lawsuit it is only the accuser who presents the plaint. Narada himself gives an exception to this:

> To the person who has suffered a greater injury or whose case has greater weight should be assigned the litigant's role, and not to the person who first reported the matter. (*DhKo* I: 113)

"Litigant's role" means the plaintiff. Accordingly, Katyayana says:

> The person who has suffered a greater injury or whose case has greater weight should become the plaintiff, not the person who first reported the matter. (*KtSm* 122)

The meaning is that under these kinds of circumstances the investigators should reverse the roles of plaintiff and defendant. When both come simultaneously to assume the roles of plaintiff and defendant with respect to each other because there are two different plaints to be proven, then the complaint of the petitioner who is of a higher caste or has suffered a greater injury should be heard first. Accordingly, Brihaspati states:

> When a plaintiff and a defendant seek to be heard first, then the case should be taken up in the order of the social class or taking into account the injury suffered. (*BSm* 1.1.172)

When they belong to the same social class, then it should be taken up taking into account the injury suffered. Manu, however, gives the order in which the cases are tried when several pairs of

plaintiffs arrive together:

> Paying attention only to these two—what is and what is not in accord with the provisions of polity, and what is and what is not in accord with dharma—he should try all the cases brought by litigants in the order of their social class. (*MDh* 8.24)

5. Plaint

[*Vyavahraka*, pp. 80–92]

On this issue, Brihaspati states:

> Thereafter, when he has arrived the plaintiff should put down the plaint. (*BSm* 1.2.5)

The meaning is that, when the defendant has come near, he should write down the plaint. Accordingly, Yajnavalkya says:

> In the presence of the defendant, the charge should be written down exactly as reported by the plaintiff. (*YDh* 2.6ab)

The statement "as reported" is intended to point out that the same plaint that was reported should be written down and not another plaint; it does not mean that only what was reported should be written down. For this reason, Yajnavalkya himself states that at this time specifics such as the year should be written down even though it was not reported:

> recording the year, month, fortnight, day, name, caste, and the like. (*YDh* 2.6cd)

The year pertaining to the time of loaning of the money and the like should be written down. Month and so forth also pertain to the same time. Katyayana points out the specifics comprehended by the words "and the like":

> After entering the period, year, month, fortnight, day, time, region, country, place, caste, appearance, age, article contained in the plaint and its dimensions, amount, his own name, the names of the kings in due order, residence, name of what is to be secured, the names of ancestors in due order, the injury, the one who took, the one who gave, and reasons for forbearance, as well as others, he should first state the plaint verbally and then put it down in writing. (*KtSm* 124–26)

"Period" is the period when the money was borrowed and defined according to the current king. "Year," namely, the god-year and the like.[65] "Time" is the period defined according to the evidence such as enjoyment. "Region" is the specific area in which the field and the like given in the plaint is located. "Country" is a territory such as the *doab*. "Place" is the village and the like in which the subject of the dispute, such as a house, is located. "Appearance" is the particular clustering of component elements. "Age" is youth and so forth. "Dimensions," namely, the size in terms of Daa,

Tul, Prastha,[66] and so forth. "His own," that is, the plaintiff's. "Of the kings," that is, of the kings reigning during the time of enjoyment of the field and so forth. "Residence" is the house, cattle station, and the like. "Ancestors" are the father and so forth of the plaintiff and the defendant. "Injury" caused by the creditor to the surety.[67] "One who took," namely, the one who made the acquisition through a gift and the like. "One who gave," namely, the donor. "Reasons for forbearance" are the grounds for tolerating the enjoyment by someone else of one's own money and the like. "Others" means items beyond those pointed out, such as interest and source of acquisition. Accordingly, Brihaspati states:

> The plaint should be free from faults, containing the charge, and including the evidence and the source of acquisition. He should have these written down: the article, its amount and profit, the injury, and the reason for forbearance. (*BSm* 1.2.5–6)

Brihaspati, likewise, has given also other characteristics:

> Brief in extent, abundant in meaning, unambiguous, distinct, free from contradictory evidence, and capable of countering opposing evidence[68]—after examining carefully these kinds of characteristics, he should accept a plaint made that is certain; what is other than that is a specious plaint. (*BSm* 1.2.18)

The author of the *Sagraha* also states:

> Containing the charge; endowed with the required characteristics; complete; distinct; containing the issue to be proved; using words with literal meanings; conforming to the original charge; well recognized; not conflicting; certain; capable of proof; concise, yet containing the entire charge; not inconsistent with regard to place and time; stating the year, season, month, fortnight, day, time, country, region, place, house, the name of the article contained in the charge, caste, appearance, and age; containing the dimensions and the amount of the article contained in the charge; stating one's own name and that of the defendant; inscribed with the names of the ancestors of opponent and self, and of several kings; stating the reasons for forbearance and the injury suffered; and pointing out the taker and the donor—when a report containing these characteristics is made to the king, it is known as the plaint.

"Containing the charge" = containing the objective; "endowed with the required characteristics" = endowed with attributes such as brevity and abundance of meaning; "complete" = not requiring additional words; "distinct" =not containing indistinct syllables; "containing the issue to be proved" = not bereft of the charge that he intends to prove; "using words with literal meanings" = not containing words used in a metaphorical or figurative sense; "conforming to the original charge" = not in conflict with the charge that was initially reported; "well recognized" = referring to objects well recognized in the world; "not conflicting" = not in conflict with the city, kingdom, judge, king, and the like, as also not in conflict with what precedes and what follows, with epistemic sources such as perception, and with the dharma of legal procedure; "certain" = not raising a suspicion that there may be a different meaning; "capable of proof" =suitable to be proved; "concise" = not prolix; "containing the entire charge" = not leaving out anything that needs to be stated; "not inconsistent

with regard to place and time" = not containing such statements as: "The betel nut field in the middle region" and "One thousand mangoes of the autumn crop have been stolen."[69] "Inscribed with the names of the ancestors of opponent and self, and of several kings"—opponent is the defendant, and self is the plaintiff; ancestors are the father, etc., of the two; several kings are those during the period of enjoyment. The meanings of the rest have already been explained.

The provisions beginning with "Containing the charge" and ending with "not inconsistent with regard to place and time," along with the names of the plaintiff and the defendant, are to be employed in plaints of all lawsuits. Therefore, every plaint must necessarily contain them, because without them it is impossible anywhere to easily prove the charge. Not all the features beginning with the year, on the other hand, need to be employed in every case, because even in the absence of some of them it is possible to prove the charge in specific cases. Consequently, one should record in a particular case those that are found to be useful for it, but not in other cases, because they are of no use there. Among them, the times beginning with year are useful in lawsuits pertaining to the doubling of a loan given on interest and in lawsuits focused on which was earlier and which was later with respect to a gift, purchase, pledge, and the like.[70] Country, region, and place, as also the names of the ancestors of opponent and self and of several kings, and pointing out the taker and the donor are useful in lawsuits pertaining to immovable property. Name of the article contained in the charge, caste, appearance, and age are useful in the case of theft, sale without ownership, and the like, as also in lawsuits concerning money. Dimensions and amount are useful in lawsuits regarding articles that can be measured, weighed, or counted, as also in lawsuits pertaining to theft. The reasons for forbearance are useful in lawsuits pertaining to such issues as indifference with regard to a place. Injury suffered is useful in lawsuits such as that between a debtor and a surety. These are examples. In this manner, one should understand that, along with the features beginning with "containing the charge," the year and the rest should be recorded whenever they are useful in specific cases. For this very reason, Katyayana says:

> Country, place, location,[71] caste, name, residence, extent, name of the field, the father and grandfather, and enumeration of past kings—one should record these ten in lawsuits pertaining to immovable property. (*KtSm* 127–28)

The intention is that one should record these because they are useful in such cases. Harita also says:

> Seat; bed; vehicle; article made of copper, brass, or iron; grain; stone article; garment; biped; quadruped; gem; pearl; coral; diamond; silver; and gold—likewise, if there is a collection of articles—their total number should be counted. The litigants should do the measurement using the method of measuring employed in that particular region with regard to that particular article, as also the counting.

…He states that the counting should be done after measuring with that method of measuring.

Thus, given that it is impossible to prove the charge when features that are useful in a particular case are absent, a plaint lacking the useful features is totally unacceptable. For this very reason, Katyayana says:

> A plaint is regarded as unacceptable when it lacks the region and time, omits the article and the amount, and lacks the extent of the charge. (*KtSm* 138)

"Extent of the charge" means the dimensions of the article of the plaint. Likewise, a plaint should be rejected outright when it also lacks attributes such as purpose.

> The king should reject a plaint that is implausible, presents no loss, is meaningless, is without purpose, is incapable of proof, or is contradictory. (*KtSm* 140)

Here, the implausible has been explained by Brihaspati:

> What no one really does is called implausible. (*BSm* 1.2.9)

Here is an example of it: "He took a pan made with 1,000 Palas."[72] "Presents no loss" means causing no harm; for example: "He carries on his activities in his house with the light provided by the lamp in my house." The meaningless and what is without purpose have been described by Brihaspati:

> When the damage caused or the amount at issue is minuscule, it is said to be meaningless. When, however, there is no obstruction to carrying out one's tasks, it should be recognized as without purpose. (*BSm* 1.2.10)

Of these, here is an example of the meaningless: "He looked at me with a smile" or "He stole lac that belonged to me." An example of one without purpose is: "Yajnadatta performs a recitation boastfully near our house." Brihaspati himself has described these two in a different way:

> A lawsuit not capable of inclusion within the subjects of litigation beginning with lending money on interest is meaningless. One not capable of inclusion within the subjects beginning with verbal assault should be known as without purpose. (*BSm* 1.2.11)

The meaning is this. A lawsuit that does not fall within the eighteen subjects of litigation beginning with nonpayment of debts is meaningless. When a plaint contains subjects beginning with verbal assault that do not lend themselves to proving the charge, it is without purpose. Those incapable of proof and contradictory have also been described by Brihaspati himself:

> "This man must return my bow made of hare's horn": such an impossible plaint, wise people say, is incapable of proof. When a plaint that is submitted opposes the judge, king, city, or kingdom, it is called contradictory. (*BSm* 1.2.12–13)

Narada also points out the faults of a plaint:

> Pertaining to another's lawsuit, lacking meaning, without amount or title, deficiency or excess in the document, botched document—these are said to be the defects of a plaint. (*NSm M* 2.8)

Narada himself explains these:

> When the writing in the plaint is carried out by one plaintiff with respect to a common lawsuit, or by a plaintiff who has not been appointed to that lawsuit, wise men call that pertaining to another's lawsuit. (*DhKo* I: 143)

The meaning is this. A single member of a company writes the charge of the company in the plaint, or a person not appointed, that is, a person who is unrelated, writes the charge of one individual in the plaint.

> When someone out of hatred and delusion says, "He is a killer of a Brahman," and in that regard abandons the charge, they take that to be a plaint lacking substance. (*DhKo* I: 143)

The meaning is that in a plaint, when the man making the charge forsakes what he has said, that plaint is lacking meaning.

> A plaint in which, with respect to what must be counted, weighed, or measured, as also with regard to a field, house, and the like, the amount is not specified is one without amount.
>
> Acquired through learning; obtained as a pledge; received; bought; come down through successive generations—where such information is not written down, that plaint is without title.
>
> Year, month, fortnight, lunar day, day of the week—where these are not written down, that plaint is regarded as having a deficiency in the document.
>
> When someone, after writing down the plaint and before a plea could be entered, notes down beforehand the witness, that plaint should be considered to have an excess in the document.
>
> When both in their entirety have been presented by the plaintiff and written down by him in a somewhat indistinct manner, that plaint is regarded as botched. (*DhKo* I: 143)

The meaning is that the two sides[73] in their entirety have been presented by just the plaintiff. Narada himself, further, has pointed out also other plaints that are unacceptable:

> A plaint is considered unacceptable when there is a violation of the proper sequence, when the meaning comes by inverting the order, when the meaning comes from scattered words, when it is meaningless, when the time has passed, and when it is double-based.[74] (*DhKo* I: 143)

Among these, one in which there is a violation of the proper sequence has been explained by Narada himself:

> When the sense of the plaint cannot be surmised in the order in which it is written down, however, the plaint is not approved; it is called one with a violation of the proper sequence. (

DhKo I: 144)

The meaning is that the violation of the proper sequence consists of placing the syllables in a haphazard manner. One where the meaning comes by inverting the order is when the meaning is revealed by sundering the word order. One where the meaning comes from scattered words is when the meaning is produced by blending words together. Narada himself has explained the meaningless and the rest:

> Where, abandoning the original meaning, a secondary meaning of it is written down, that plaint is meaningless; it lacks the means of establishing the transaction.
>
> Where an article is written down whose stipulated time has passed, it is declared to be a plaint whose time has passed, even when means of proof are available.
>
> When in a plaint the charge to be proved, because of the difference in evidence, is considered to be twofold with consideration of separate times, that plaint is said to be double-based. (*DhKo* I: 144)

"Means of establishing the transaction," that is, means of establishing the money involved in the original transaction. "Stipulated time," that is, the time limit. "Difference in evidence," that is, difference in means of proof. Narada himself, likewise, has given also other kinds of specious plaints:

> By placing different syllables and thereby surmising a different meaning, the document becomes confusing and the allegation too becomes confused. (*NSm M* 2.170)

> When a man, even though capable, has shown indifference for ten or twenty years to the issue to be established in the lawsuit, his plaint is phony.
>
> When he gets the means of proof written down along with the charge that is presented, that plaint is invalid, because it lacks the proper order of statements. (*DhKo* I: 143)

"Allegation" here refers to the charge to be proved, while "means of establishing" refers to the evidence. Harita also states:

> When, however, a case, the presentation of whose evidence has commenced, is entered in two ways—according to one's own charge to be proved or different from it— that plaint is also phony.

The meaning is this. A case that one has begun to demonstrate is entered in the plaint in two ways, that is, in two modes: as a charge that is to be demonstrated, and in a manner different from the charge as initially reported or opposed to it. That is also a specious plaint. Bhrigu also states:

> When the defeated party has abandoned the charge or when one alternative has to be assumed at a time, that plaint cannot be demonstrated, being dismissed by authoritative texts and the cultured elite.

When both a contradictory and a noncontradictory charge have been written down in the same plaint, it should be summarily dismissed.

“Defeated” mean the defeated litigant. Pitamaha also states:

When someone enters statements[75] that are mutually contradictory, his plaint, mixing up contradictory statements, is invalid.

Katyayana also states:

“This man does not want to do what is required by law” or “This man does what is illegal”—someone who does not have this written down, his plaint is invalid. (*KtSm* 139)

The meaning is this. He does not have it written down either as a refusal, like this: “He took the money come down to me legally and does not return it” or as a commission, like this: “He has stolen my field and so forth.” Further:

A plaint that is contrary to the city or the country, that is barred by the king, and that mixes several subjects of litigation is invalid. (*KtSm* 136)

The meaning is this. One that is contrary to the customs of the city or the country, and one whose object is something like a tax or a hall excluded[76] by the king, is invalid under all circumstances. One that mixes several subjects of litigation such as the nonpayment of debts is invalid when presented simultaneously, because they require different modes of proof. With regard, however, to what Katyayana himself has said—

With the desire to find out the truth, a king may freely admit even a lawsuit with multiple plaints that is ascertained to be well in conformity with legal procedure. (*KtSm* 137)

—it is intended to teach that a plaint that mixes several subjects of litigation may be admissible at separate times. Or else, it is intended to teach the following: gold, clothes, farm animals, and grain that are different in kind but are included within a single subject of litigation such as the nonpayment of debts, and articles of the same kind taken under different provisions such as number, extent, place, time, and interest, are differentially given in the plaint in order to state what exactly happened. Thereupon, all that, insofar as they are to be returned, is to be accepted as summed up in a single lawsuit. Therefore, this statement does not contradict the earlier text.[77] Further:

Title, full enjoyment, disruption, and declaration: these four, they say, are the faults of a plaint when they are presented without cause.[78] (*DhKo* I: 155)

“Title” is the source of the acquisition of the property, such as receiving as a gift.[79] “Full enjoyment” is the noncessation of the use according to one’s wishes. “Disruption” is the disruption

of enjoyment for reasons such as a tumult in the region. “Declaration” is stating the title and enjoyment through proper arguments. The meaning is as follows. These four beginning with title are said to be the proper attributes of a plaint. When, however, title and the rest are entered in the plaint “without cause,” that is, without any reason for their entry, then they are said to be faults of a plaint. Therefore, in this case what is required should be inserted and what is not required should be taken out. Accordingly, Katyayana himself says:

> He should get superfluous points cut out and have the gaps filled in. He should write it on the ground until the case is fixed. (*KtSm* 130)

“Cut out” means taken out. “On the ground”[80] is used elliptically. Accordingly, Katyayana himself says:

> The adjudicator should have the plaint that has been spontaneously presented written down, first on a plank using white chalk and then, once it has been corrected, on paper. (*KtSm* 131)

“Spontaneously presented” means presented without intrusions such as fear. “Corrected” means without superfluous points and gaps, and without faults such as implausibility. Accordingly, Brihaspati states:

> Experts on plaints say that a true plaint must be one free of the faults of a plaint, containing the charge to be proved along with its evidence, certain, and recognized in the world. (*BSm* 1 .2.14)

“Recognized in the world” means not opposed to the dharma pertaining to transactions, because a meaning such as “well known in the world” is implicitly declared in the statement “free of the faults of a plaint.”[81] For this very reason, Manu states:

> A plaint, even if it is well substantiated, is not acceptable to the court if its provisions are contrary to settled dharma pertaining to transactions.[82] (*MDh* 8.164)

The meaning is that even though it is free from all faults, a plaint should not be accepted by court officials if it is opposed to the dharma pertaining to transactions.

Brihaspati states that a plaint containing the aforementioned attributes is of four kinds:

> An accusation based on suspicion, one based on facts, one referring to the recovery of a received article, and one appealing for a fresh trial of a dispute that has been decided. (*BSm* 1 .2.41)

On this point, Narada states:

> He may correct the plaint, however, only until a plea has been entered. Once the plaint has

been checked by the plea, the correction has to be halted.

One should not assume here, moreover, that, following the maxim of the "conch time," the correction should be halted when the proper time for entering a plea has passed.[83] For this very reason, Narada himself says:

As long as the defendant has not entered a plea to the plaint, the plaintiff may continue to write until he has the matter as he intended.

Some want to permit corrections to be made even after the plea has been entered. That should be rejected, because it would lead to an infinite regression, and because it goes against the statements given above. For this very reason, the author of the *Sagraha* states:

He should again get the gaps and superfluities of the plaint properly corrected by the officials,[84] and then listen to the plea.

Consequently, when the defendant has begun his plea, a statement by the plaintiff, even if it is useful, should not be admitted, because the time for it has elapsed.

"Has begun" means has presented, because even while the plea is being entered it is permitted to make corrections. Accordingly, Katyayana states:

What the plaintiff, because of negligence or deception, has failed to state, or is given within the plea should be accepted in the case of both. (*KtSm* 193)

"Within the plea" means what is stated by the plaintiff even while the plea is being articulated. "Both" means plaintiff and defendant. In the case of the defendant, however, the "plea" is the part consisting of evidence.[85] When court officials have accepted the plea even before the plaint could be corrected, then, after punishing the assessors, the case should be heard after the plaint has been presented again.

What should be done, however, when a plaintiff is unable to present the plaint immediately is stated by Brihaspati:

When an accuser is incapable of making a statement due to timidity, he should be given time in keeping with his ability and the requirements of the case. (*BSm* 1.2.34)

6. Plea

[*Vyavahraka*, pp. 92–105]

With regard to this, Brihaspati states:

Once the plaint has been determined, what is acceptable and unacceptable have been specified, and the case given in the plaint has been fixed, he should then have the plea written down. (*BSm* 1.3.2)

The meaning is as follows. Once the judge and others, after consultation, have permanently fixed the plaint that had already has been determined by the plaintiff, then the defendant should have his plea to that plaint written down. Narada also states:

> When, however, this kind of plaint has been presented by the plaintiff, the defendant should then enter a plea addressing that plaint.

The meaning of "this kind" has been explained by Harita:

> Comprising few syllables, full of meaning, free from the faults of a plaint, having witnesses, containing the cause, irreproachable, and well settled—when this kind of plaint has been written down by the plaintiff, the defendant should then enter a plea addressing that plaint.

"Having witnesses," that is, having being examined by the judge and the like. It is implicitly established, however, that when the plaint is not of this kind, he should not enter a plea. In order to make this clear, Harita himself, after giving one example of a specious plaint, says that no plea should be given to it:

> When one man makes a demand on a piece of land held in common or a property in the custody of a company, a wise man should not enter a plea.

Consequently, Yajnavalkya states that the defendant should write down a plea only to a plaint that has been examined:

> After the defendant has heard the point, his plea should be written down in the presence of the petitioner. (*YDh* 2.7)

The meaning derived from the syllables is "after the defendant has heard the point of the plaint." [86] The author of the *Sagraha* also says:

> Without the possibility of a different meaning, without a deficient meaning, containing the legal title, without gaps or superfluities, not implausible, and not needing other syllables for its meaning—immediately after this kind of plaint has been written down on paper is the time for the defendant, who has heard the point, to enter a plea.

The meaning is that the plaint has been written down in such a way that it contains all the attributes beginning with "without the possibility of a different meaning." This restrictive rule with respect to time applies only to disputes with regard to cows and the like. Accordingly, Narada states:

> In cases involving cows, land, gold, women, theft, assault, or an emergency, as also violence and accusations involving great crimes, he should proceed with the case immediately. (*NSm*

M 1.39)

"Accusations" is announcement of a sin. Even though it is a variety of assault, it is stated again to draw special attention to it. An urgent matter has been explained by Katyayana:

> When the value of the thing would depreciate, or it would perish or be lost, then a delay should not be permitted; for that is an urgent case. (*KtSm* 149)

Katyayana himself, likewise, states that in other cases also a plea should be entered immediately:

> He should make him enter a plea immediately when the case relates to a cow, bull, field, woman, birth, deposit, loan, gift, purchase, sale, deflowering of a virgin, theft, quarrel, violence, treasure trove, deceit, or perjury. (*KtSm* 150–51)

"Deceit" refers to an agreement made under the sway of fear and the like. Yajnavalkya also states:

> In cases involving violence, theft, assault, cows, the accusation of a great crime, or an urgent matter, as well as one involving a woman, he should make the defendant enter a plea immediately; in other cases, texts of recollection, say, a delay may be allowed as desired. (*YDh* 2.12)

"In other cases" means in cases such as the nonpayment of a debt. Accordingly, Narada states:

> Because of the intricate nature of disputes and also because of the debility of memory, in cases about debt and the like, he may at his discretion grant a delay with the desire to ascertain the facts. (*NSm M* 1.38)

"About debts" means in subjects of litigation such as the nonpayment of debts. For this very reason, Pitamaha states:

> He should make every effort to grant a delay in a case relating to debt, sealed deposit, open deposit, gift, partnership, agreement, and partition of property.

Even in these kinds of cases, a delay is granted only when requested by the defendant for such reasons as failure of memory. Accordingly, Katyayana states:

> After hearing the charge stated in the document, if the defendant for good reason requests a delay in entering a plea, he should be granted that without a doubt. (*KtSm* 145)

Katyayana himself says that in cases relating to things done immediately before, the plea should

be entered immediately, because there the memory is fresh:

> In cases relating to things done immediately before, he should make him enter a plea immediately; in cases relating to matters transacted a long time ago, the king should grant a delay to the defendant. (*KtSm* 153)

The term “defendant” is used as a synecdoche. For this very reason, Narada states:

> When someone wants to present a plea but his mind is not up to the task, a delay may, indeed, be granted to both the plaintiff and the defendant.

And, in anticipation of the question how much time should be given, Narada himself states:

> Immediately, one day, five days, or three days, depending on whether the case is serious or minor; in cases involving debts and the like, he should receive a delay of one month, three fortnights, or seven days.

Gautama also says, “He should wait for a year” (*GDh* 13.28). With regard to this, Katyayana has given the norm:

> Taking into account the time, the capacity, and the relative seriousness of the lawsuits, the king shall grant a short or a long delay to the defendant. (*KtSm* 147)

“Time” relates to money and the like. “Capacity” relates to the litigants. “Lawsuits” are the issues that are presented in the plaint. The meaning of the above verse, however, has been elucidated in detail by Katyayana himself:

> In the case of something done immediately beforehand, it should be done immediately; when a year has elapsed, in a day; when six years have elapsed, in three days; when twelve years have elapsed, in seven days; when twenty years have elapsed, he should get ten days or half a month; when thirty years have elapsed, one month; and beyond that, three fortnights. (*KtSm* 154–55)

He also points out the norm based on capacity:

> He may grant a delay himself according to his wishes for a period of less than a year, and a year to someone who is an idiot, insane, or severely ill.
>
> When the defendant has gone to another region, when the status of the property is unknown,[87] or when either the source or the witnesses are located in a foreign country, then a delay should be granted to men until their return to their own country. (*KtSm* 156–58)

The presiding officer of the court should establish times less than a year— beginning with one day and extending to several fortnights, with a maximum of three fortnights—taking into account the capacity of the litigants.[88] "Source" is the property that is at the basis of the litigation.[89] Likewise, he clarifies the norm based on the lawsuit:

> A delay of a day, a month, a month and a half, a season, or even a year, or even beyond that should be granted consistent with the nature of the case. (*KtSm* 148)

"Nature of the case" is the relative seriousness of the case. Thus, Brihaspati states that, when one of these times that has been fixed arrives, a plea should be written down that is neither deficient nor superfluous with respect to the meaning derived from the syllables of the plaint:

> When the litigants have been brought together simultaneously, the defendant, in the presence of the assessors, should then write down the plea corresponding to the meaning derived from the syllables of the plaint. (*BSm* 1.3.26)

In this regard, Katyayana says with reference to the king:

> After examining whatever rules of practice with regard to the issue have been handed down through successive generations, the king should have the plea entered in accordance with the law. (*KtSm* 164)

The characteristics of a plea, however, are given by Prajapati:

> Encompassing the plaint, substantive, unambiguous, not confusing, and comprehensible without an explanation: such, experts in these matters state, is a plea.

"Encompassing the plaint" means covering the entire plaint. "Substantive" means able to answer the previous accusation. "Unambiguous" means without gaps, paronomasia, and the like. "Not confusing" means having a meaning clear from the syntax. "Comprehensible without an explanation" means easily understood. Harita also states:

> Connected to the points of the plaint, addressing more than a single point, not confusing, not terse, not containing disjointed words, encompassing, not too prolix, substantive, unambiguous, not stemming from just a single section of the plea, within the hearing of the litigant, and without a hidden meaning—he should enter this kind of plea.

"Connected to the points of the plaint" means corresponding to the accusation. "Addressing more than a single point" means containing all the excerpted points. "Not containing disjointed words" means preceded by a definite proposition. "Not stemming from just a single section of the plea" means not dealing with just one part of his own plea. "Within the hearing of the litigant"

means heard by the man filing the case. “Without a hidden meaning” means intelligible simply through well-known words and without indirect modes of expression. One should know that a plea with these characteristics is of four types, because of Brihaspati’s text of recollection:

> The plaint is of four types, and so is the rejoinder. (*BSm* 1.2.36)

Anticipating the question, “How, then, does the rejoinder become fourfold?” Narada states:

> A plea is of four kinds by way of denial, admission, special plea, or establishing a prior judgment. (*NSm M* 2.4)

The instrumental case used here shows that a plea has these characteristics. Of these, Katyayana gives the characteristics of denial and admission:

> If the accused rejects the accusation, one should recognize that plea as denial in terms of legal procedure. Stating the truth of the charge is said to be admission. (*KtSm* 167–68)

Narada has given the characteristics of a special plea:

> With regard to the charge written down by the plaintiff, if the defendant, after admitting, “It is so,” provides an exculpating reason, it is said to be a special plea.

Harita has given the characteristics of a prior judgment:

> If someone says: “On this complaint a trial has already been conducted between him and me, and on that occasion he was defeated,” then that plea is one of prior judgment.

The pleas with the characteristics given above are described also by Prajapati in order to make them clear:

> “Whatever the plaintiff has reported here in connection with me, all that is false”: such a plea is said to be denial.
>
> “This must, indeed, be given to him. The plaintiff has not spoken an untruth”: this is the second kind of plea, called admission.
>
> “He did, indeed, give it to me, but I have returned it to him”: this kind of plea is called special plea.
>
> “I was formerly sued by the plaintiff on this issue, and in that lawsuit he was defeated by me”: this is called the procedure of prior judgment.

Katyayana says that this plea of prior judgment is of three kinds:

> “I will prove that he was, in fact, previously defeated by me through court officials, witnesses, or a document”; in this way the plea of prior judgment is of three kinds. (*KtSm* 172)

The term “court officials” is used to refer implicitly to those who tried the original lawsuit. Likewise, Katyayana himself says that there are four types of denial:

> “This is false,” “I do not know anything about this,” “I was not present there at that time,” and “I was not born at that time”—these are the four types of denial. (*KSm* 169)

In the same way, varieties of admission also should be surmised, such as: “I took it,” “It is true,” and “It is just as he says.” The varieties of a special plea also should be gathered, such as: “I took it, but returned it,” “I received it as a gift.” In this connection, Brihaspati states:

> The procedure for the defendant to respond to an apposite charge has been explained. Among all the four varieties, now we explain which should not be accepted.
>
> He should not have this kind of plea written down: different from what is alleged, neutral, with gaps or superfluities, not apposite, not encompassing, not substantive, and ambiguous. (*BSm* 1.3.27–28)

“Different from what is alleged” means that it does not eliminate the accusation written down by the plaintiff. “Neutral” means that it does not have the character of a plea. “Not apposite” means that it does not correspond to the accusation. Katyayana also states:

> Unrecognized, contradictory, too terse, too prolix, ambiguous, impossible, unclear, irrelevant, containing the flaw of excess, nonencompassing, with a disruptive statement, with a hidden meaning, confusing, comprehensible only with an explanation, and unsubstantial—such a plea is not approved by the wise. (*KtSm* 173–74)

Katyayana himself has explained the first five of these specious pleas:

> When it is made by someone ignorant of the marks, features, thousand,[90] and time, or in a different language, that plea is unrecognized. (*KtSm* 176)

The meaning is that what is stated by someone ignorant of the distinguishing marks, the appearance of bodily parts, the number, and time, and what is stated in a foreign language is “unrecognized.”

> “I returned it when I was a child”; “Indeed, I did not return it”—when someone gives such a response, that plea should be recognized as contradictory. (*KtSm* 177)

The meaning is that a statement where what was stated earlier contradicts what is said later is a contradictory plea.

> Instead of saying, “On this charge this man was formerly defeated by me,” when he says, “This man formerly by me,” that is said to be an incomplete plea. (*KtSm* 178)

The meaning is this. When he should have said, “On this charge this man was formerly defeated by me,” a plea that states only this much, “Formerly by me,” is too terse.

> When he should have said, “I did take,” he says, “The article I formerly took, with that I performed the task,” that is too prolix. (*KtSm* 179)

The meaning is this. When in a plea of admission only this much should be stated: “I did take,” a plea that states: “The article I formerly…” is too prolix.

> When he should have said *deya may*—“It should be given by me”—but he says something like *maydeyam*—“By me it should (not) be given”—wise people should know this as an ambiguous plea within legal procedure. (*KtSm* 180)

The meaning is this. In the statement *maydeyam*, however, given the possibility of the Sandhi combination of the negative *a*, it is possible also to understand *adeyam* (should not be given).[91] Therefore, this sort of plea is ambiguous.

“The money that is to be given by us has been given by the son of our great-grandson”: this kind of plea is impossible. One that is impossible to identify as “This is the plea” is unclear. Thinking that these two specious pleas are clear, Katyayana has not explained them. He has clarified the irrelevant:

> “This man, being both strong and weak, formerly concealed a violent act”: they think that this is a nonstatement; it is said to be an irrelevant plea. (*KtSm* 181)

The meaning is this. What terminates simply with the declaration of the bad conduct of the plaintiff, in the same way as mutually contradictory statements, is a plea that is irrelevant.

“Containing the flaw of excess” means containing a flaw as a result of hyperbole, as when, in response to “One hundred should be given,” he says, “Two hundred was given.” Katyayana himself has explained the four beginning with “nonencompassing”:

> When the plaint states, “I gave him one thousand and a half” and it is said: “I returned the half,” that is here said to be nonencompassing.
>
> Before the plaintiff has properly written down his allegation, when he says, “I did not take it in the past,” it is called a plea with a disruptive statement. (*KtSm* 182–83)

This is the meaning. When a plea of denial is made before the plaint has been finally resolved, it is a disruptive statement.

> “So, will someone return a *tmarasa* that he has not taken?” In terms of legal procedure, however, this should be known as a plea with a hidden meaning. (*KtSm* 184)

What this example of a specious plea means to say is: “I did not take the lotus. Therefore, I will not return it.” The meaning of the verse is this. A plea should be viewed as having a hidden meaning when it contains words such as *tmarasa* (for lotus) not found in common usage everywhere, and when it contains roundabout expressions[92] and the like.

> “Is it that it is to be given (not given) always by him alone? It could be that it is to be given (not given) by me.”[93] Experts in these matters consider this kind of plea to be confusing. (*KtSm* 185)

The meaning is that a confusing plea is one that contains words that are syntactically unconnected or with more than one meaning. A plea that is comprehensible only with an explanation is one that is difficult to understand by itself. Katyayana himself explains the unsubstantial plea:

> “A crow does not have—*or* does have—teeth.” This kind of plea is unsubstantial, and in reality it is considered as truly a specious plea. (*KtSm* 186)

The meaning is that a useless plea, such as a plea relating to the appearance of teeth in a crow, is unsubstantial.

Katyayana himself, likewise, states that when several pleas such as admission and denial are entered with respect to a single plaint, it is a specious plea:

> When there is admission with regard to one part of the plaint, a special plea with regard to one part, and denial with regard to another part, it is a specious plea because of mixture. (*KtSm* 189)

Even if there is a mixture, how can it be a specious plea, because it is possible for the totality of the pleas to cover the entire plaint, since each plea sets aside each section of the plaint?

That is true. For this very reason, in order to justify the fact that it is a specious plea, Katyayana himself says:

> Within a single lawsuit, however, the burden of proof cannot fall on both the litigants; both cannot succeed in demonstrating the case; and there cannot be two kinds of proof in a single case. (*KSm* 190)

This is the meaning. Proof consists of evidence such as a document. The burden of that, in the case of a special plea or prior judgment, falls squarely on the defendant; in the case of denial, only on the plaintiff; and in the case of admission, however, on no one at all. This will be explained later. And in this way, when there is a mixture of the three pleas apart from admission, the defendant has to present two kinds of evidence and the plaintiff one kind of evidence. When there is a mixture of two pleas apart from admission and denial, then the defendant alone has to present two kinds of evidence. When, on the other hand, there is a mixture of denial and special plea, or a mixture of denial and prior judgment, then the plaintiff has to present one kind of evidence and the defendant one kind. One should not say, “We can go with anything that the rules dictate,” for evidence is

presented in order to demonstrate what is to be demonstrated. And in a single lawsuit there is only one thing to be demonstrated by only one litigant. Therefore, it is improper for both to have to present evidence or one to have to present two kinds of evidence, because what is to be demonstrated does not belong to both, given that, when the one thing that needs to be demonstrated by one kind of evidence has been demonstrated, another kind of evidence would be of no use. Even if, however, this flaw is absent in mixing admission with the other kinds of plea, nevertheless, concluding the same lawsuit after the four feet and after just the first half of them is contradictory.[94] Consequently, here also we have indeed a specious plea. Therefore, it was appropriately said: "it is a specious plea because of mixture."

Accordingly, in every kind of lawsuit only one plea encompassing the entire plaint should be accepted. When, however, that kind of a plea is totally unobtainable, but only several pleas each covering a single portion of the plaint, then, because there is no other course, he should first establish different plaints in accordance with the pleas in order to remove the flaws in the litigants' statements, then accept each plea sequentially with reference to the corresponding plaint. Otherwise, there would be no verdict at all in the case. For this very reason it was said: "it is a specious plea because of mixture." The intention is to state that there is, indeed, a plea once the mixture has been removed in the aforementioned manner.

For this very reason, with regard to this topic Harita states the proper order in accepting the pleas, preceded by the question:

> If both a plea of denial and a special plea are given in the same case, or admission accompanied by another plea, which of these pleas should be accepted?

The word "first" is needed to complete the sentence. He states which should be accepted first:

> One should know that it is the plea that deals with the more significant amount or where the evidence will bear fruit; such a plea is unmixed. Otherwise…[95]

This is the meaning. When there are several pleas other than admission, the one that relates to the greater amount should be accepted initially. When there are several pleas along with admission, setting aside the admission even though it relates to the greater amount, the other plea should indeed be admitted first, because the evidence does not bear fruit in the case of admission. One should not assert:

This statement only refers to the case where several pleas that cover the entire plaint are presented at the time for entering a plea. Here is such an instance: "Some man has seen my lost cow in this individual's house." When he is so accused, he says: "That is false. She was born in our very house"—or something like that. The reason is that otherwise there would be the fault of having to supply a word denoting a sequence.

It is for this reason that it is said: "such a plea is unmixed; otherwise…." The meaning of this is as follows. When there is this kind of sequence, the plea is unmixed. Otherwise, namely, when they are simultaneous, the plea is indeed mixed. In the case where several pleas cover the entire plaint, however, pleas that have optional references, there is no occasion at all for a mixture. Therefore, this statement refers only to a mixed plea. For this very reason, Harita himself has introduced another statement with reference to several pleas covering the entire plaint:

> Between a plea of denial and a special plea also the special plea should be accepted.

This is because a special plea has greater weight than a denial, for reasons such as the fact that the former cannot be proven in any other way. That is its import. Therefore, given that denial and special plea are simply examples, it should be inferred that even when other kinds of plea are entered simultaneously, the one with the greater weight should be accepted.

Where, however, in a mixed reply the reason for the order given above does not exist because the replies are of equal weight, there too a plea should be accepted following the order that one prefers, because it is necessary to arrive at a verdict.

The plea, as described above, should be entered by the defendant on his own. Accordingly, Harita states:

> In that regard, the defendant is obliged to enter a plea that corresponds to the accusation, a plea that addresses the complaint adequately and is free from any sign of flaw.

When, however, the defendant does not present a plea on his own and the time for entering a plea has elapsed, Harita himself states what must be done:

> When he does not offer a plea to the plaint in accordance with the complaint, the defendant should be compelled to offer a plea by strategies such as conciliation.

"Should be compelled" by the king—that completes the statement. Accordingly, Narada states:

> He should offer a plea corresponding to the complaint. When he does not, the king should compel him to offer one by methods such as conciliation and dissension until that complaint has been properly addressed.

Harita describes conciliation and the rest:

> Conciliation is speaking kindly. Dissension is instilling fear. Giving is taking away money. Force is beating and binding.[96]

Likewise, Vasistha also says:

> Trickery, conciliation, dissension, force as the fourth, deception, forbearance, and illusion are said to be the seven strategies.

With regard to a situation when these strategies prove futile, Vasistha himself says:

> When, however, someone does not offer a plea even after being compelled by these strategies, it is proper to declare him defeated after seven days have elapsed.

[*Vyavahraka*, pp. 113–23]

On this topic, Brihaspati states:

> Among those who stand in the court, however, the assessors, after recounting the plea correctly, should assign the onus of proof to one litigant. (*BSm* 1.4.2)

The meaning is this. From the midst of those who are present in the court of law, the assessors should allocate the onus, that is the burden, of proof to one, either the plaintiff or the defendant. Likewise, Katyayana says:

> When, after it has been corrected, the flawless plea has been properly written down in that manner, the plaintiff or the defendant is required to put forward the proof. (*KtSm* 212)

The meaning is this. The person who has to demonstrate his case, whether it is the plaintiff or the defendant, immediately after the proper plea has been entered, should write down the evidence so as to demonstrate what needs to be demonstrated. Likewise, Yajnavalkya says:

> Immediately thereafter, the plaintiff should have the evidence he will use to prove what is alleged in his plaint written down. (*YDh* 2.7)

The meaning is this. Immediately after a successful plea has been entered, the litigant who has the burden of proving his case should disclose the evidence. Anticipating the question as to what that evidence might be, Yajnavalkya himself states:

> Document, enjoyment, and witnesses, it is declared, constitute evidence; and, in the absence of any one of these, one of the ordeals. (*YDh* 2.22)

An ordeal consists of the balance and the like. Narada, likewise, states:

> Evidence, however, is said to be of two kinds: human and divine. The human, it is stated, is by means of documents and witnesses, and the divine by means of the balance and the like. (*NSm M* 2.28)

The meaning is that the human is said to be by means of documents and witnesses, and by means of enjoyment, because enjoyment is also related to human beings. For this very reason, Brihaspati states:

> The human is said to be of three kinds: witnesses, documents, and inference. (*BSm* 1.4.8)

"Inference" is enjoyment, because it intimates ownership.

[section from p. 114, line 9 until p. 119, line 12 is omitted]
Brihaspati states:

> In a plea of prior judgment and special plea, the defendant himself should prove the contents of his plea, while in a plea of denial the plaintiff should prove the contents of his plaint. (*BSm* 1.4.11)

The meaning is this. Given that in a plea of denial there is no admission, the contention in the plaint has the character of the issue to be demonstrated, and therefore the plaintiff himself should demonstrate the contention in the plaint. In a special plea, however, the contention in the plaint, because it is admitted, loses its character of the issue to be demonstrated, and therefore the man filing the plaint does not have to demonstrate the contention in the plaint. On the contrary, the defendant has to demonstrate through evidence the special plea presented in the plea but not admitted by the plaintiff. For this very reason, Katyayana states:

> After first acquiescing, if he states another special plea of greater weight within his rejoinder, it is the latter that has to be demonstrated, not the former.[97] (*KtSm* 191)

After first acquiescing, that is, agreeing to what the plaintiff has said, if the defendant states within his rejoinder, that is, within his plea, another special plea of greater weight, that is, able to trounce the contention in the plaint he had agreed to, a special plea such as the fact that it was returned, then it is the latter that he has to demonstrate, because the plaintiff has not agreed to that. The plaintiff need not demonstrate the former, that is, all the contentions contained in the plaint that the defendant had agreed to. That is the meaning. The expression "after acquiescing" is used as a synecdoche. Therefore, even when, after saying that what the plaintiff has said is false, he presents a special plea, it is the special plea alone that must be demonstrated, because of Harita's statement:

> Between a plea of denial and a special plea also, the special plea should be accepted.

Likewise, Harita himself has stated that in a plea of admission neither of the litigants has to present evidence:

> In a plea of prior judgment and special plea, however, the defendant should present the evidence, while in a plea of denial the plaintiff should do so. In a plea of admission, no evidence is presented.

This is because the nature of the issue to be demonstrated is absent in both the plaint and the plea—that is the intent. Consequently, when there is an admission the legal proceeding has only two feet. Accordingly, Katyayana states:

> In a plea of denial, one should know, the judicial proceeding has four feet, as also in a special plea and plea of prior judgment, while it has two feet in an admission. (*KtSm* 245)

In a plea of admission, therefore, because the presentation of evidence and so forth are absent, the judicial proceeding comes to a conclusion at the end of the plea.

In like manner, it should be ascertained that in pleas of denial and special plea the evidence can be both human and divine, whereas in a plea of prior judgment only human; in an admission there is no evidence at all. Brihaspati states that even in pleas of denial and special plea, in some cases there can be no divine evidence:

> In verbal assault and a dispute about land, divine evidence is prohibited. (*BSm* 1.4.13)

The intent, therefore, is that in these cases one should not prescribe such evidence. For this very reason, Katyayana states:

> In verbal assault and in the case of land he should not prescribe an ordeal. (*KtSm* 239)

Is it not true that Katyayana himself has prescribed an ordeal in the case of verbal assault in the following verse?

> *When a lawsuit relating to violence and verbal or physical assault has commenced, and in lawsuits arising from the use of force, one may use witnesses or an ordeal.* (*KtSm* 229)

True, it was so stated, but that referred to cases of extreme assault. This, however, refers to cases of minor assault. So there is no contradiction at all. "Land" is used here as a synecdoche to refer to immobile property. For this very reason, Pitamaha states:

> He should avoid ordeals in lawsuits involving immobile property. He should settle these by means of witnesses, a document, and enjoyment.

In such cases, one should understand that when human evidence is not available, a verdict should be arrived at through inference, and when that is not possible, through a royal command. Accordingly, in order to give the restrictive rule on the use of ordeals on some occasions, Pitamaha himself says:

> Even when witnesses are present, the king should examine a lawsuit concerning accusations of a great sin and the theft of a deposit by means of ordeals.

Katyayana also states:

> Also, when there is parity among the witnesses, he should establish innocence by means of ordeals. Or, in a lawsuit involving the death penalty, when the litigant resorts to an ordeal even though witnesses are available, the judge should not question the witnesses. (*KtSm* 232)

Brihaspati also states:

> When a doubt arises about a document or the testimony of a witness, and when the inference is beset with uncertainty, an ordeal is the means of establishing innocence. (*BSm* 1.4.17)

Inference is enjoyment and a reason, such as having a firebrand in the hand.[98] Vyasa so states:

> "I did not execute this document. It is a forgery produced by someone else." When the paper has been discounted in this way, the verdict in the case is arrived at through an ordeal.

The meaning is that, in a lawsuit where a verdict must be rendered, he should give a verdict through an ordeal. Katyayana also states:

> If a document that had been read to the king is found to contain deception, the king, occupying the seat of dharma, should establish innocence by means of an ordeal. (*KtSm* 238)

Likewise, in order to give the restrictive rule on the respective cases where a document, enjoyment, and witnesses are to be used when they are available, Katyayana himself states:

> When something is said to be a bylaw of an association, guild, company, and the like, the means of proving that is a document, not an ordeal or witnesses.
>
> In cases relating to the construction and extent[99] of gateways and paths, to waterways, and the like, enjoyment alone is the stronger evidence, not documents or witnesses.
>
> Not giving what one promised to give, decisions relating to masters and servants, those relating to not delivering an article after it has been purchased, not paying the money after purchasing, gambling, and betting—when a dispute has arisen with regard to these, the means of proof is said to be witnesses, not an ordeal or a document. (*KtSm* 225–28)

That the differentiated application of the modes of proof enunciated above should be strictly adhered to by the investigators is stated by Narada:

> Those knowledgeable in modes of proof should carefully adhere to the modes of proof, for modes of proof become ruined by modes of proof that are not differentially applied. (*NSm* 1 .64)

The meaning is this. By modes of proof that are not differentially applied, the authors of the modes of proof come to ruin. Therefore, experts in assigning the burden of proof should assign the burden of proof while thinking: "Here, which mode of proof should be written down with reference to whom?"

In this regard, some self-appointed experts have said: "The statement regarding documents and the like with respect to immobile properties is not intended to be a restrictive rule with respect to the modes of proof. On the contrary, its aim is to point out the customary practice. Otherwise, when for some reason a document or the like is destroyed, it would be impossible to render a verdict." This is

incorrect, because, even if it presents a restrictive rule, it is possible to render a verdict through judicial reasoning or by the order of the king. For this very reason, Pitamaha states:

> In a case where there is no document, enjoyment, or witnesses, and an ordeal cannot be resorted to, the king is the authority.
>
> In litigations full of uncertainties where it is not possible to render a verdict, the king is the authority, because he is the lord of all.

For this very reason, after stating the visible and invisible modes of proof, Vyasa states:

> In the absence of these, however, wise men state that the verdict is the order of the king.

The meaning is that when modes of proof are not available, either because they are really absent or because of a prohibition, the verdict is based on the king's order.

8. Evidence

[*Vyavahraka*, pp. 123–24]

On this topic, Brihaspati states:

> After hearing the plaint and the plea, the party to whom the assessors assign the proof should prove his complete assertion by means such as a document. (*BSm* 1.4.5)

"Proof" means evidence. Narada also states:

> Once the charge and counterdocument have been written down fully letter by letter, in the third foot the plaintiff should establish it through evidence. (*NSm M* 2.27)

"Charge" means the plaint. "Counterdocument" is what has been written down to challenge the plaint; that is, the plea. "The third foot" is the one called burden of proof. "Evidence" means mode of proof. So, this is its meaning. When the three feet— plaint, plea, and burden of proof—are set, he "should establish it through evidence," that is, the plaintiff should demonstrate his case through a mode of proof. Vyasa gives the meanings of the terms "case" and "evidence":[100]

> "Case," they say, is what is to be demonstrated, while "evidence" is said to be the means of proof. The latter, one should know, is divided into two: human and divine.

Brihaspati also gives the divisions of evidence:

> Evidence is said to be of two kinds: human and divine. Each of these is divided into many types by sages who know the truth. (*BSm* 1.4.6)

Katyayana also states:

> The divine is of five types and the human is stated by texts of recollection to be of three kinds. (*KtSm* 220)

The statement “of five types” is not intended to be a limitation, because another text of recollection presents other kinds of ordeals also, such as rice and heated Ma coin. The statement “of three kinds” is clearly intended to be a restrictive rule, because it is not controverted by other texts of recollection. For this very reason, the statement is worded here: “is stated by texts of recollection to be of three kinds.” The following statement of Narada, on the other hand, is not intended to restrict the number:

> Here two procedures have been declared: document and witnesses. (*NSm M* 1.3)

If that were the case, it would result in being contradicted by his statement:

> Texts of recollection lay down three kinds of evidence: document, witnesses, and enjoyment. (*NSm* 1.65)

Consequently, one must understand that the statement “two procedures have been declared” was made in order to assert that the two other than enjoyment have a larger scope.[101]

9. Verdict

[*Vyavahraka*, pp. 281–90]

Next, what must be done at the beginning of the verdict. On this topic, the author of the *Sagraha* states:

> When the evidence has been presented according to his wish following the prescribed methods, the king along with the assessors should examine it and determine victory and defeat.
>
> The person who, by means of any one of the prescribed kinds of evidence, demonstrates his case covering the plaint completely is the victor.
>
> When a person fails to demonstrate or demonstrates the case opposite his own, or when a flaw is seen in his evidence, however, he is the loser.

On this, Vyasa states:

> The king, however, should punish the man who was defeated and pay honor to the victor. Even when they are not defeated, those who oppose Vedic scripture should be punished.

Honor should be carried out with perfumes, garlands, clothes, and the like, because Vyasa himself states in his text of recollection:

> Honor is paid to the victor with perfumes, garlands, clothes, and the like.

Katyayana gives what is to be done after paying homage:

> The litigant, after being commended, should be entrusted with the claim that he has succeeded in demonstrating. The king should give him a document signed by his own hand. (*KtSm* 262)

Narada also states:

> The article, whether mobile or immobile, that had been placed in the middle should be given to the victor along with interest and the paper.

"Paper" means the victory document. Brihaspati, likewise, states:

> When the king hands over to the victor a document containing the plaint, plea, and evidence, and concluding with the verdict, it is called a victory document. (*BSm* 1.6.26)

All that has to be stated in a victory document has been given in the rules regarding documents, and should be reviewed here.[102] With regard to the statement: "should be entrusted with the claim that he has succeeded in demonstrating," Yajnavalkya has given a special feature in some contexts:

> In case someone denies a written plaint containing several parts and the plaint is later proven with regard to one of its parts, the king should make him pay all the claims; he may not, however, recover a claim not recorded in the plaint. (*YDh* 2.20)

This is its meaning. When the defendant denies the content of the document executed at the time of the plaint, a document containing several items such as gold coins, clothes, and ornaments, saying, "That is false," and the plaintiff proves a portion of its contents using evidence only for one portion of it, making the defendant agree to that, saying, "True, I took it," then the king should make him return to the plaintiff all the claims contained in the plaint. Thus, a property that was not written in the plaint but was later orally stated by the plaintiff should not be seized by the king as something that must be returned.

What the text says comes down to this. In this kind of situation, the king should disregard the statement: "Discarding subterfuge, the king should conduct judicial proceedings in accordance with the facts" (*YDh* 2.19), because here it has been demonstrated that the man had a crooked intention. One should not argue that, following the statement on subterfuge, the king should disregard even compelling the payment of the whole amount. This is stated by Katyayana:

> When an accused denies everything and then mutually acknowledges even a small amount, the defendant should be compelled to pay the whole amount: that is the view of Brihaspati. (

KtSm 474)

Brihaspati is mentioned as a sign of respect. Narada also, in order to show that he should attend to compelling payment of the whole amount, states the obligation of the accused to pay:

> When a man who has been accused with regard to several points denies everything, and one portion of the accusation is demonstrated, he should pay the amount he is accused of. (*NSm* 2.6 variant)

Is it not true that, should the aforementioned meaning be expressed by the ancient texts, it would preclude their having a meaning leading to a verdict in accordance with dharma, because they would then express a verdict in accordance with legal procedure by following subterfuge?

True, but even then there is no fault, because in the aforementioned matter a verdict in accordance with legal procedure bars a verdict in accordance with dharma. For this very reason, Brihaspati states:

> Where a verdict is reached based solely on an authoritative text, it should be known as legal procedure; by that also dharma is annulled. (cf. *BSm* 1.1.19; *DhKo* I: 100)

"Where" refers to the aforementioned matter and the like.

The following statement of Katyayana, however, refers to a situation where one is not completely certain about the presence of crooked intentions:

> Even in an accusation consisting of several points, as much as the creditor proves by means of witnesses, only that much money—what he has proved—does he receive. (*KtSm* 473)

The reason for this is the fact that, unlike in the ancient texts,[103] here there isn't a portion that reveals the defendant's crookedness characterized by the denial of everything.

Some argue that this statement refers to the debt of the father and so forth that is to be paid by a son and so forth, because only in such a circumstance do the three kinds of plea "I do not know anything about this" (*KtSm* 169) become possible.[104] That is not correct, because (i) even in a dispute regarding a debt contracted by oneself, the three kinds of plea are possible for reasons such as forgetfulness; and (ii) even when a statement of denial is made by a person such as the son in a lawsuit concerning a debt contracted by a person such as the father, making a plea of denial, "That is untrue," what is entailed is the payment of only the amount that has been demonstrated.

It may be argued, further, that it is not possible for an individual such as the son to enter the plea, "That is untrue." Do not say that, because that is possible for one who had attained the age of reason at the time the loan was taken, and even for one who had not attained the age of reason at that time through the testimony of a person such as his mother.

It may be argued, further, that the statement about receiving only the amount that has been demonstrated is made with reference to a person such as the son who makes the plea: "I do not know anything about this" (*KtSm* 169). Then you should consider that the statement is in fact referring to three kinds of plea, beginning with "I do not know anything about this." What is the point in restricting it to persons such as the son?

Now, it may be argued that it refers to persons such as a son because a text of recollection states:

“In a plea of denial, sons and grandsons should pay a debt that has been established through witnesses” (*YDh* 2.50). Then it should refer to persons such as a son who plead, “That is untrue,” but not to persons such as a son who plead, “I do not know anything about this,” because the text of recollection states: “In a plea of denial…that has been established through witnesses.”

Others, however, settle it in a different way:

The statement about forcing someone to pay the entire amount claimed refers to a plea of denial combined with an arrogant proclamation such as this: “If the plaintiff demonstrates even one claim among all the claims contained in the plaint, then I will pay all those claims!” The statement about receiving only the amount that has been demonstrated, on the other hand, is made with reference to a plea without such a proclamation.

This is also incorrect, because the statement: “In case someone denies a written plaint containing several parts” (*YDh* 2.20) is made without any restriction.[105] It is not correct to assert that, because this statement is intended to be illustrative of subterfuge (*YDh* 2.19), the reference to a denial with an arrogant proclamation is resorted to so as to demonstrate that. This is because (i) after taking up the subterfuge consisting of denying everything, it presents the conclusion of the judicial process; and (ii) this by itself demonstrates the fact that the statement is intended to be illustrative of subterfuge.

By force of the plaint itself, in the aforementioned context the payment of the entire amount is enforced. Consequently, statements such as: “In case someone denies” (*YDh* 2.20) are explanatory reiterations.[106] Therefore, both statements should have the very same meaning.

Nor is it correct to say that one resorts to the above explanation to resolve statements such as that of Katyayana: “Even in an accusation consisting of several points, as much as the creditor proves” (*KtSm* 473), because their contradiction is resolved in a straightforward way.

Enough of this presenting and refuting various views that cause prolixity!

The manner of enforcing payment is pointed out by Katyayana:

> The king, however, should make a Brahman pay the creditor by using only gentle words, while he should force others in accordance with the regional custom, and evil persons by using physical force. He should make a coparcener or a friend pay through subterfuge. (*KtSm* 477–78)

Not only should the king enforce payment to the creditor; he should also extract a fine for himself. This is stated by Narada:

> When, however, a wealthy debtor does not pay because he is mean spirited, the king should compel him to pay after taking one-twentieth for himself. (*NSm* 1.113)

The meaning is that he should take from the debtor money equal to one-twentieth portion of the money that he is compelled to pay. This, furthermore, refers to a debtor who has admitted his debt. In the case of a debtor who has denied his debt, however, Vishnu states:

> If the creditor files a complaint with the king and proves that the debtor is guilty, the debtor should pay the king a fine equal to one-tenth of the amount, while the creditor who has obtained his money should pay one-twentieth. (*ViDh* 6.20–21)

The one who has obtained his money pays as fee for obtaining payment and not as a fine, because he is not guilty of a crime.

With regard to a case when the debtor files a complaint with the king, Manu states:

> When someone reports to the king a creditor seeking to recover a debt on his own initiative, he should compel him to pay the money to the creditor, as well as one quarter of the debt. (*MDh* 8.176)

The meaning is this. A debtor who is a king's favorite, thinking: "I will cause an obstruction through the king's order," reports to the king—that is, informs him, saying: "He will harass me"—a creditor "seeking to recover"—that is, who has set out to demand the money he has lent—"on his own initiative"—that is, "according to his own wish." When this happens, the king should force him to repay the debt and pay a fine as well equal to one quarter of it.

Now, with reference to what Manu himself has stated:

> The amount that one man falsely denies and the amount that the other falsely claims—the king should impose a fine equal to double those amounts on those two men who are proficient in adharma. (*MDh* 8.59)

—Manu's commentary notes that it refers to a debtor and creditor who are haughty, because the text uses the expression: "who are proficient in adharma."[107]

With reference to what Yajnavalkya has stated, however:

> When, after a denial, the charge against him has been proven, he should give the sum claimed and an equal amount to the king. (*YDh* 2.11ab)

—it should be regarded as referring to a situation where a haughty debtor does not have funds adequate to meet the aforementioned fine, because otherwise it would be difficult to avert a conflict with the statements of Visnu and Manu given above. The man who brings a false accusation, on the other hand, even if he does not have sufficient funds, is not fined an equal sum.[108] As to what Yajnavalkya himself has stated, however—

> A man who files a false accusation should bear twice the sum listed in the accusation. (*YDh* 2.11cd)

—its meaning is as follows. He should "bear," that is, pay the king, "twice the sum listed in the accusation," that is, "twice the amount contained in his accusation." When that amount of money is unavailable, one must take into consideration a secondary alternative, such as: "he should acquit himself of debt through work" (*MDh* 9.229).[109]

As to what Narada has stated, however:

> One must not file a false accusation. One who files a false accusation becomes guilty. The fine prescribed for such as accusation falls on the man filing the accusation. (*NSm M* 1.50)

—given that it is an injunctive text of a generic nature, it refers to cases where no punishment is prescribed within the context of individual subjects of law. It should be understood, therefore, that the same fine prescribed by Visnu in the case of a plea of denial by a dishonest person applies also to an honest person making a false accusation. Likewise, it should also be understood that the same fine prescribed by Vyasa in the following statement applies also in the case of a false accusation to a person who himself admits it as such:

> In a plea of denial, however, when the defendant admits it himself, that should be recognized as an admission. It is said that half the chastisement is applied to him. (*DhKo* I: 545)

Now, with reference to what Manu has stated:

> If a man denies a loan, however, and it is established by evidence, he should compel that man to return the loan to the creditor and in addition impose a small fine proportionate to his means. (*MDh* 8.51)

Manu's commentary notes that it refers to an honest debtor who is unable to pay a fine of one-tenth.[110] In saying "by evidence," Manu shows that in a lawsuit consisting of two feet,[111] however, only the payment of the loan is enforced, not the payment of a fine, because in such a case the plea of denial and false accusation are absent. In the same manner, one must conclude that even in a lawsuit with four feet, when a plea of denial and false accusation are absent by reason of an accusation based on suspicion, a plea of ignorance, and the like, there is no fine.

As to what is stated in a text of recollection:

> In the first foot the fine is one-quarter; in the second, one-half; in the third, three-quarters; and in the fourth, he receives the full fine.

—the teacher Visvarupa has explained in detail that it lacks authority because it is contradictory.[112] Therefore, one should recognize a fine occasioned by a plea of denial or a false accusation only in a lawsuit containing four feet when a proper reason for it exists. In this regard, the specific fine in a lawsuit pertaining to the nonpayment of a debt has been pointed out. In a lawsuit pertaining to deposits and the like, however, the specific fine will be stated within each respective subject of litigation.

Now, as to what Katyayana has stated:

> He should compel a man found to be innocent to pay fifty, while a man found to be guilty is subject to a fine. (*KtSm* 459)

—it refers to a man who has been determined to be innocent through a specific ordeal. For this reason, immediately thereafter Katyayana himself states:

> In ordeals of poison, water, fire, balance, holy water, rice, and hot gold coin, he should

> prescribe a fine in the following order: 1,000, 600, 500, 400, 300, 200, and 100. In this manner, he should prescribe lower fines for lower kinds of ordeals. (*KtSm* 460–61)

This fine connected with an ordeal, furthermore, is combined with the fine connected with either a plea of denial or a false accusation, because there is a combination of the causes of the fines.

Yajnavalkya, however, states that the wager is combined with the fine prescribed in the authoritative texts:

> If the litigation includes a wager, then the court should make the defeated party pay both the fine and the wager, as well as return the sum claimed to the creditor. (*YDh* 2.18)

Narada also states:

> In a suit that includes an additional wager, of the two parties, the one that loses should be made to pay the wager he has made and also the fine for defeat. (*NSm M* 1.5)

In this regard, Katyayana states:

> In this manner, the person occupying the seat of dharma, being totally impartial toward the litigants, should render a verdict in lawsuits along with Brahmans, and not otherwise. (*KtSm* 475)

Brihaspati also states:

> The king should diligently investigate doubtful cases. There three prosper, while harm is done to one.
>
> The winner obtains money and honor; the defeated undergoes chastisement and detention; the king gains victory, gifts, and fines; and the assessors acquire merit. (*BSm* 1.9 .30–31)

Narada also states:

> When a king, self-possessed, always tries lawsuits in that manner, he will spread his blazing fame wide in this world and attain the same world as Indra. (*NSm M* 1.65)

Brihaspati also states:

> A king, by upholding in this manner the verdict as described in authoritative texts, after spreading his fame in this world, will become a minister of great Indra.
>
> A king, by arriving at a verdict through witnesses, documents, and reasoning, after spreading his fame in this world, will reach the crest of the sun. (*BSm* 1.9.32–33)

Manu also states:

> When he controls love and hatred, however, and looks into cases in accordance with dharma, his subjects follow him, like rivers the ocean. (*MDh* 8.175)

> When, however, a king foolishly judges cases in a manner contrary to dharma, his enemies will soon bring that evil man under their dominion. (*MDh* 8.174)

10. Retrial

[*Vyavahraka*, pp. 300–4]

On this topic, Narada states:

> Among women, at night, outside the village, inside a house, and between enemies— a legal transaction between these, even when done, should be subject to being redone. (*NSm M* 1.37)

This is the meaning. A lawsuit decided by women or enemies, or in secret, should be subjected to a new investigation because of the possibility that it was based on ignorance or partiality.[113] Thus, after annulling what has been decided by force, or through fraud by reason of love, hatred, and the like, another legal proceeding should be instituted. Accordingly, Yajnavalkya states:

> He should annul legal actions carried out by force or fraud. (*YDh* 2.31)

What is intended is that thereafter he should institute another legal proceeding. Likewise, Yajnavalkya himself states that the same should be done also when those conducting the legal proceeding do not possess the required qualities:

> A legal action undertaken by someone who is intoxicated, insane, afflicted, in distress, a child, or frightened, or by a similar individual, as well as one executed by an unrelated person, is invalid. (*YDh* 2.32)

The expression "or by a similar individual" includes lawsuits filed by old people and the like. For this very reason, Manu states:

> A legal action undertaken by persons who are intoxicated, insane, distressed, or totally subservient, by children or the aged, or by unrelated persons, is invalid. (*MDh* 8.163)

"Unrelated persons" refers to those who have no relationship to the plaintiff or the defendant. Narada also states:

> A lawsuit that is opposed to the interests of the city and country or that has been proscribed

by the king is inadmissible—so have those who know dharma declared. (*DhKo* I: 115)

Harita also states:

All these suits are said to be inadmissible: one that is proscribed by the king, one that is hostile to the inhabitants of the city, to the entire country, as well as to the major constituencies of the state; as also those hostile to the prominent men of a city or a village. (*DhKo* I: 564)

So, one must conclude that the ultimate intent is that, after annulling such a lawsuit even if it has been adjudicated or even if it has been judged, another legal proceeding should be instituted. Katyayana gives the distinction between "adjudicated" and "judged":

When one party is determined by the assessors alone to be stating either the truth or a falsehood, it is said to be "adjudicated," and when it is done on the basis of the testimony of witnesses, it is said to be "judged." (*KtSm* 495)

The meaning is that when it is determined on the basis of the testimony of witnesses it is "judged." Now, with reference to what Manu has stated:

Wherever something has been adjudicated and judged, he should recognized it as executed according to dharma. He should not bring it back again. (*MDh* 9.233)

—it should be regarded simply as a general rule referring only to contexts where there are no reasons for annulment, such the fact that it was done by a woman. For this very reason, Brihaspati gives an exception to it:

When someone is not satisfied, however, even after a decision has been reached by a family and the like,[114] the king should investigate how it was carried out and take up again for review one that has been badly conducted. (*BSm* 1.9.23)

The meaning is this. Even when it has been decided by authorized adjudicators, if a litigant thinks that the lawsuit has been resolved illegally, then a retrial should be instituted.

When it has been determined that the suit was wrongfully conducted, Narada declares the fine for those who carried out the previous trial:

When a lawsuit has been improperly tried, however, a fine should be imposed on those assessors, for without a fine no one will ever keep to the proper path. (*NSm M* 1.57)

It should be understood, however, that this fine is for the assessors only when the victorious party did not contribute to the wrongful conduct of the trial. If he did contribute, then he too should be fined. Accordingly, Brihaspati states:

> After arriving at a determination along with many Brahmans accomplished in authoritative texts, he should fine the previous assessors who are guilty, along with the victorious party. (*BSm* 1.9.24)

Yajnavalkya states that the imposing of a fine, including upon the victorious party, is to be carried out strictly in the manner stated in the topic dealing with the fining of assessors:

> After subjecting lawsuits that have been wrongly tried to a new trial, however, the king should punish the assessors along with the victorious party with a fine that is twice the amount in dispute. (*YDh* 2.305)

The meaning is this. "That have been wrongly tried" through the fault of the assessors along with the victorious party.

When, however, the legal proceeding becomes vitiated due to the fault of the witnesses, then the witnesses alone are subject to fines in the manner stated in the topic dealing with the fining of witnesses, and not the victorious party or even the assessors. The intention is that when, furthermore, it is caused by the faults of the victorious party and the witnesses, then only they are subject to fines, not the assessors. Thus, a retrial simply on the basis of dissatisfaction should be ordered when the original verdict has merely an appearance of legality. With respect to a case where proper legal process was followed, Narada states:

> When someone thinks that a case has been adjudicated and a verdict rendered against the provisions of dharma, he may have that case tried again after agreeing to pay a double fine. (*NSm M* 1.56)

"Against the provisions of dharma" means what is done contrary to the provisions of treatises on dharma. When a litigant arrogantly thinks thus even with regard to a properly decided case—that is the meaning. Here, given that it is impossible for the determination of the lawsuit to be overturned, even after the retrial one should indeed impose the fine that the man defeated in the prior trial has agreed to pay. This has been stated by Yajnavalkya:

> When a man who has been defeated according to proper procedure but still thinks, "I am not defeated," returns and is defeated again, he should be assessed a double fine. (*YDh* 2.306)

Thus, a retrial accompanied by a fine takes place only in the higher court presided over by the king, because only the king has the authority to impose the fine. In a higher court without the king, however, a retrial should be carried out without a fine, because the part consisting of the fine can only be carried out by the king. That the higher court is superior to the lower courts, furthermore, is necessary, for otherwise doubts would not be resolved. The relative superiority of assessors, moreover, has been pointed out in the section dealing with the determination of adjudicators.[115]

When one suspects that a trial carried out in a king's court was wrongly tried, however, a retrial may be conducted in the court of another king who is of superior quality. Accordingly, a text of recollection states:

> When another king has through ignorance rendered a verdict without conforming to legal process, that too, carried out illegally, should be subject to a retrial.

Now, with reference to what Pitamaha states:

> What has been decided in the village may be appealed to the city. What has been decided in the city, however, may be appealed to the king. When something has been decided by the king, whether it is decided properly or improperly, there is no further appeal.

—it refers to a situation when another court that is superior to the lower court is not available. When a person is defeated by reason of his own statements, however, there is no retrial even when a superior court is available. This is stated by Narada:

> For those who have lost their cases because of witnesses or assessors, there may be a retrial when a flaw is detected, but for those who are defeated by reason of their own statements the reinstitution of the legal process is not permitted. (*NSm M* 2.40)

The meaning is this. For those who have suffered defeat because of a verdict either made on the basis of the testimony of witnesses or made solely by the assessors, it is possible to have a retrial of the lawsuit when there has been a flaw in the previous trial. The use of the term "assessors" is meant as a synecdoche to include ministers and the like. For this very reason, Manu states:

> If a minister or a judge settles a case wrongly, the king himself should settle it and fine him 1,000. (*MDh* 9.234)

Notes

INTRODUCTION

1. For accessible studies of the semantic history of dharma, see Olivelle 2009b and Hiltebeitel 2011.

2. For an encyclopedic account of law in Indian history, see the five-volume study of Kane1962–1975. More compact studies are found in Lingat 1973 and Derrett 1973.

3. First published half a century ago in 1961. I cite from the new 2012 edition.

4. We have indications that political science and specifically Kautilya's *Treatise on Politics* were significant within the intellectual world of the Guptas. An important Sanskrit drama, *Mudrrkasa,* whose plot is placed at the very beginning of the Maurya Empire in the late fourth century B.C.E., is closely connected to the *Treatise on Politics.* The hero of the drama is Canakya, who by this time was identified with Kautilya and considered the author of the *Treatise.* See Willis 2009; Balogh 2015.

5. See also the complex technical vocabulary employed by Kautilya within the context of court proceedings in ch. 10.1.

6. A book called *Adhyakapracra* (Activities of Superintendents), which is the title of Book 2 of Kautilya's treatise, probably existed as a separate document both prior to the composition of that treatise and after. It is referred to in Vatsyayana's *Kmastra* (1.2.10) and in Medhatithi's commentary on *MDh* 7.61; 7.81. For further details, see Olivelle 2013: 11.

7. For a detailed study of these four areas of law both in the text of Kautilya and in later legal treatises, see Olivelle and McClish 2015.

8. The Sanskrit term *jti* here may refer to some kind of social group based on birth and not simply to caste in its technical meaning.

9. Kautilya devotes the entire Book 11 to the topic of political *sagha*s or confederacies. Commercial and professional bodies are often referred to as *gaa* and *rei*.

10. These are translations of technical legal terms in Sanskrit: *dharma*, *vyavahra*, *caritra*, and *sasthna*, used frequently in other parts of the *Treatise on Politics* as well.

11. See, for example, *A* 2.8.3; 2.22.15.

12. The Sanskrit term is *pracra*. For this meaning of the term, especially within the context of the two other terms custom (*caritra*) and canon (*sasthna*), see Scharfe 1993: 195–203.

13. See the articulation of this principle by Gautama (ch. 2.1: #1).

14. For greater details, see Olivelle 2004a, 2005c, 2006c. More comprehensive histories are found in Olivelle 2009b and Hiltebeitel 2011.

15. For detailed studies of the term in the *Rig Veda*, see Horsch 1967 (English version 2009) and Brereton 2009.

16. For a detailed study of *dharma* in this period, see Olivelle 2004c.

17. I have omitted the numerous citations of verses from the *Rig Veda* found in these texts and counted only once the numerous parallel passages that are repeated almost verbatim.

18. The *Kautaki*, which parallels the *Aitaraya*, does not use *dharma* at all. In the *Jaiminya Brhmaa* of the *Sma Veda* and the *Gopatha Brhmaa* of the *Atharva Veda* the word *dharma* occurs in eleven passages. In all the reckonings of the term in the *brhmaa*s, I have omitted citations from the respective collections of hymns.

19. For a detailed study of this passage, see Olivelle 1996b. As I explain there, I take the compound *dharmaskandha* as a Bahuvrhi. Traditionally, it has been taken as a Tatpurua and translated "divisions of dharma." The term *skandha* here refers to the torso or the main part of the body. Note the term *ekaskandha* for a coconut tree,

which has only one trunk and no branches.

20. See below, ch. 6.

21. For an examination of dharma in this literature, see Lubin Forthcoming.

22. For studies and bibliography on Asoka and his ideology, see Falk 2006; Olivelle 2009c; Olivelle et al. 2012.

23. See Thapar 1997 for an overview. My own views on the Asokan imperial ideology based on dharma are found in Olivelle 2012b.

24. See Pollock 1985, 1989a, 1989b. See also the collection of studies on this topic in Dallapiccolla and Lallemant 1989, and my own reflections specifically with regard to "science" in relation to dharma, in Olivelle 2005a: 62–66.

25. I have used various strategies, because a single consistent translation would not do justice to every context. I have employed "treatise," "authoritative treatise," and the like, especially because scriptural texts, such as the Veda itself, are frequently called *stra*.

26. The authors of the earliest extant aphoristic texts on dharma refer to and cite seventeen of their predecessors. For these early authors and for an extended treatment of the literary history of the science of dharma, see Olivelle 2010. A much more voluminous history can be found in Kane 1962–1975 and Lingat 1973.

27. See Deshpande 2006.

28. See Katyayana's *vrttika* 39 on Panini 1.2.64; Patanjali on Panini 1.1.47 (I: 115).

29. The *Vaikhnasa Dharmastra* was probably a text whose circulation was limited to the Vaikhanasa religious tradition. It did not have an impact on the broader tradition of the science of dharma and is never cited in later legal digests.

30. Aupajanghani (*BDh* 2.3.33); Bhallavins (*BDh* 1.2.11; *VaDh* 1.14); Eka (*pDh* 1.19.7); Harita (*pDh* 1.13.11; 1.18.2; 1.19.12; 1.28.1, 5, 16; 1.29.12, 16; *BDh* 2.2.21; *VaDh* 2.6); Kanva (Kava, *pDh* 1.19.3; 1.28.1; Kanva (Kva, *pDh* 1.19.2, 7); Kapila (*BDh* 2.11.28); Kasyapa (*BDh* 1.21.2); Katya (*BDh* 1.3.46); Kautsa (*pDh* 1.19.4; 1.28.1); Kunika (*pDh* 1.19.7; Kutsa (*pDh* 1.19.7); Mahajajnu (*BDh* 3.9.21); Manu (*pDh* 2.14.11; 2.16.1; *GDh* 21.7; 23.28; *BDh* 2.3.2; 4.1.13; 4.2.15; *VaDh* 1.17; 3.2; 11.23; 12.16; 13.16; 19.37; 23.43); Maudgalya (*BDh* 2.4.8); Puskarasadi (*pDh* 1.19.7; 1.28.1); Varsyayani (*pDh* 1.19.5, 8; 1.28.1).

31. The four early aphoristic texts on dharma, as we saw, cite the opinions of numerous other authorities on dharma. There is a refreshingly candid back and forth about these divergent opinions, something lacking in treatises on dharma produced in the first millennium C.E. See Olivelle 2010: 38.

32. These expressions are already found in documents prior to the Common Era: *pDh* 2.15.1; *GDh* 11.20.

33. See Derrett 1976: 603. He is reviewing Dumont 1962. Dumont's notions of hierarchy are further developed in his classic study *Homo Hierarchicus* (Dumont 1970).

34. The Sanskrit expression used here, *smaycrika*, is not peculiar to Apastamba; it is used by Gautama (8.11) and occurs as a topic heading in Kautilya's *Treatise on Politics* (5.5). Apastamba himself (1.7.31) uses it a second time to say that even after a Vedic student has returned home the accepted practice (*smaycrikam*) is that he should behave toward his former teachers in the same way that he did while he was a student. In the *Rmyaa* (1.1.19) we have a significant statement: Rama is said to be adept and knowledgeable about *laukike samaycre*, "accepted customs connected with the world." The connection of *samaycra* with *laukika* here is significant for the understanding of this compound.

35. Although this issue has not received much attention from modern scholars, it is a surprising fact that the term *cra* is absent in the Vedic vocabulary; it is not found in any Vedic text, even though the related term *crya* (teacher) is common. It appears to have been aneologism first employed a few times in the treatises on Vedic ritual and more frequently in the treatises on domestic ritual. The grammarian Panini (3.1.10) uses *cra* once to refer to behavior. It is likely that this somewhat new term was adopted as a central concept within the Apastamba school, irrespective of whether the texts of dharma and domestic ritual ascribed to him were written by the same individual. The beginning of his aphoristic text on domestic ritual echoes the beginning of his aphoristic text on dharma: "Next the rites that are gathered from normative practice" (*pG* 1.1.1). In both texts, the domestic rituals and the norms of dharma are derived

from normative practice. Wezler (2004) summarizes his assessment of the two classes of texts: “Ghyastras as well as Dharmastras are verbalizations of certain regional or tribal-specific aspects of traditional social ‘practice’ of the Aryas. Although historically consecutive, they surely have factual points of contact. These verbalizations are textual ‘coagulations’ of the late Vedic period that were apparently regarded by the authors as fundamentally different from older parts of the tradition.” The term *cra*, as opposed to other similar terms such as *caritra*, appears to have a normative orientation and to refer especially to the customs of normative communities of Brahmans. For a recent study on the use of *cra* in the aphoristic texts on domestic ritual, see Lubin Forthcoming.

36. Patanjali’s use of the term also points to these conclusions. On Katyayana’s *Vrttika* on Panini 1.1.1 (I: 10–11), *cra* is opposed to *jñna* (knowledge) and *prayoga* (application, usage). Here *cra* is the general behavior pattern, while *prayoga* is a particular act, both of which are opposed to *jñna* (knowledge): one can know, for example, the various nonstandard words for a cow (*gv*, *go*, etc.), but simply knowing these does not entail a fault or sin, only when one actually uses them (*prayoga*). An even stronger case for the meaning of *cra* as a habitual behavior pattern or practice is found in his comments on Panini 3.1.11 (II: 21), where the denominative word *yenyate* (“acting like a vulture”) is said to be used when a crow’s *cra* or behavior pattern resembles that of a vulture.

37. See *A* 3.13.1, 4, 7, 13, 15, 21.

38. The expression used is *aghyamnakraa* (with nonstandard internal Sandhi): see *pDh* 1.12.8. See also *pDh* 1.4.8–10. The opposite of this, that is, a practical motive for undertaking something, is called *drtha*, something whose purpose is evident or detectable.

39. Deshpande (1993: 17–32) has shown that for Patanjali the terms *laukika* and *vaidika* refer to the two distinct subdomains of Sanskrit language. What is significant for our investigation is that *laukika* in the realms of both language and law refers to areas that are distinct from the Vedic and reflects the usages of living and historical communities. Patanjali is commenting on these terms that are used by Katyayana: *Vrttika* 2 on Panini 1.2.45 (I: 217); 15 on 6.1.1 (III: 3); 5 on 6.1.83 (III: 55); 2 on 6.2.36 (III: 125).

40. For these examples see Patanjali I: 2. The argument is taken up by Kumarila in his *lokavrttika* (abdanityatdhikaraa, 276). See Bronkhorst 2011: 143.

41. A similar strategy is employed in the *Bhagavad Gt*, where the very first word is *dharma*, within the compound *dharmaketre* (“in the field of dharma”), and in the *MDh*, where the centrality of Manu is highlighted in the very first word: *manum*.

42. This theory departs from the general view in the ritual schools that a person should follow the ritual norms only as laid down in one’s own branch (*kh*) of the Veda. Each branch had its own Vedic and ritual texts; there did not exist a supra- *kh* Veda as the common property of all Brahmans or all Hindus. This notion was probably developed within the science of dharma and Vedic exegesis when dharma became normative for all without respect to ritual schools and Vedic branches. There emerged the concept of a general Veda expressed in the pithy hermeneutical maxim *sarvakhpratyaya*, namely that rules in each Vedic *kh* are authoritative for all, even for those in other *kh*s. See *PMS* 2.4.8–33; Kane III: 870; IV: 89–90, 453–55.

43. The term will be used again by Manu (2.6) in a verse totally dependent on Gautama, and by Yajnavalkya (1.7), who paraphrases Manu. Thereafter, this metaphor loses traction, even though the expression *vedamlatva* becomes commonplace in later theological debates with respect to the epistemology of dharma.

44. On this point, see Wezler 2004; Brick 2006.

45. Klaus 1992: 86. One finds this meaning clearly in the Buddhist use of the term (Pali*sati*) within the vocabulary of mental concentration (*satipahna*). The Buddhist usage places emphasis on the present, whereas within the discourse on dharma the emphasis is on recalling, that is, making present, what one knows from the past.

46. This is similar to what we will see in Medhatithi: chapters 7.2; 12.2.

47. For legal consultation, see Davis 2014.

48. The term *ia* is absent in the *pDh*, but Gautama uses it several times outside the context of the epistemology of dharma: *GDh* 9.70–71; 12.27; 19.2; 28.48, 50. The occurrences in chs. 9 and 28 have the usual meaning of cultured elite and are given within the context of constituting a legal assembly, while those at 12.27 and 19.2 appear to have

the meaning of “what is enjoined” or perhaps “what one has been instructed to do.” A similar meaning is attached to the noun *iti* at 2.42 (*iyaiir avadhena*), where the meaning is to discipline, in the context of chastising a pupil.

49. For the early history of this term, see Pollock 2005.

50. The term is used in other contexts in earlier literature: *pDh* 1.1.9; 1.5.4, 8; 1.30.5, 9; 2.9.9; 2.23.9. The past participle *ruta* occurs in *pDh* 1.8.27; 1.13.19, 20; 2.11.17; and elsewhere.

51. For this last epistemic source of dharma, see Davis 2007.

52. Not all ancient scholars accepted this kind of canon. The ninth-century commentator Medhatithi (on *MDh* 2.6) explicitly rejects the authority of such lists (see ch. 7.3: #4). Even those who accepted the list note that it is only partial, not comprehensive.

53. In Sanskrit such an opponent is called *prvapaka*, and he is a common literary figure in most scientific and scholastic writings.

54. A similar view is expressed in *GDh* 1.3.

55. See Kane III: 927.

56. See Bhattacharya 1943; Kane III: 926–68. A long list of such prohibitions is given by the thirteenth-century jurist Devanna Bhatta: *SmC* I: 30–32 (see pp. 176–77).

57. See *B* 2.4.4.14; see also *B* 4.5.1.9; 5.5.1.11.

58. The last verse is ascribed to the Sagrahakra, the anonymous author of the *Smtisagraha*, by Devanna Bhatta (*SmC* III: 620).

59. For a history of this term in the early literature, especially in Kautilya’s *Treatise on Politics*, see Olivelle and McClish 2015.

60. It is from this meaning that its philosophical use as “everyday truth” (*vyvahrikasatya*), as opposed to the absolute truth (*pramrthikasatya*), came about.

61. *payavyavahro vyavahra*: *A* 2.8.8.

62. See, for example, Vijnanesvara (on *YDh* 2.6; ch. 13.1: #1), who says that a given lawsuit should deal with a plaint with respect to only a single title of law.

63. This same formal plaint is also called by numerous technical terms, some of which I have given above: *pratijñ*, *sdhya*, *paka*, *prvapaka*, *artha*, *abhiyoga*.

64. See below, ch. 10.1I: #2; ch. 10.2: #3.

65. The history of this term is complex, and in its early usage it probably meant a judicial interrogator rather than a judge. See Olivelle Forthcoming.

66. See, for example, Davis 2014 and Derrett 1975a.

67. *dharma stranyyadeaniyat vyavasth*. Commentary on *MDh* 8.14.

68. *vato dharma anidaprathamato y vyavasth*. Commentary on *MDh* 8.8.

1. EARLY THINKERS

1. For detailed arguments on the dates of this and other treatises on dharma, see Olivelle 2010, 2012a.

2. See the very similar instruction given to a student who has completed his Vedic study in *TU* 1.11.4.

3. This is the only occurrence of the term *pariad* (legal assembly) in Apastamba. For descriptions of such assemblies, see ch. 2.1: #3; 2: #2; 3: #5; ch. 4.6.

4. On this topic, see also *GDh* 1.3–4 (ch. 2.1: #1).

5. The same point is made in texts of Vedic exegesis; see *PMS* 6.1.15, along with Sabara’s commentary on it.

6. According to the commentator Haradatta, the reference is to black grains, such as beans, or to iron.

7. “Bath graduate” (*sntaka*) refers to a Vedic student who has completed his studies in his teacher’s house, taken the ritual bath signaling the end of studentship, and returned to his natal home. The argument here is based on a fundamental principle of Vedic exegesis that distinguishes injunctions, which alone are meaningful with regard to

dharma, from “explanatory passages” (*arthavda*) that do not have injunctive force (*PMS* 6.7.30). The latter type of passage is further subdivided into metaphor (*guavda*), reiteration (*anuvda*), and historical statement (*bhtrthavda*). Here Apastamba puts the texts cited by the opponent into the second subdivision. For a detailed discussion of these exegetical principles, see Kane V: 1225–56. The passages quoted cannot be identified in any known Vedic text.

8. The meaning is that customs of a particular region and family are authoritative vis-à-vis people belonging to that region or family unless those customs go against Vedic provisions, a principle stated in *pDh* 2.14.10.

9. The reference is to the practice of levirate (*niyoga*) where a son is fathered by a brother or member of the family through the wife of a deceased brother.

10. Patanjali has traditionally been assigned to the middle of the second century B.C.E., and my own work on the theological vocabulary of the period confirms this broad dating (Olivelle 2012a).

11. See Patanjali 1.1.47 [I: 114–15]; 1.2.64 [I: 242–43].

12. See also Patanjali 1.1.1 [I: 2]. These and the subsequent rules are common in treatises on dharma.

13. Regarding these dietary prescriptions, see Olivelle 2002a, 2002b. In the case of fowls and pigs, their place of habitation defines their edibility; their wild counterparts may be eaten. On the five five-nailed animals, see also Jamison 1998. While animals with five nails cannot be eaten, five are exempt and may be eaten: hare, hedgehog, porcupine, tortoise, and monitor lizard, although there are variants of this list.

14. This verse is found verbatim in *MDh* 2.120.

15. For a discussion of the notion of *ia* and the significance of this passage within the grammatical tradition, see Deshpande 2009.

16. The term *ii* here probably refers to proper linguistic usage by *ia*s (cultured elite) in accordance with grammar (*stra*). Nevertheless, note the etymological connection among the terms *stra, ii,* and *ia*.

17. For the identification of these places and the extent of this sacred region, see Bronkhorst 2007: 1–3.

2. LATER APHORISTIC TEXTS ON DHARMA

1. For detailed discussions on the dating of the aphoristic texts on dharma, see Olivelle2000 and 2010.

2. Here I depart from Rocher’s (1976) interpretation of Gautama’s expression: *tadvid smtile.* He takes *tadvidm* as connected only with *la,* and takes *smti* (in the sense of a text)as standing alone. I have noted in the introduction the significance of placing the word “Veda” at the very beginning of his composition.

3. In this translation I follow the interpretation of Rocher 1976. The statement on transgressions is an example of the “conduct of those who know it,” and thus would appear to be authoritative. Yet, these transgressions do not constitute dharma, because “those listed later,” namely, recollection and conduct, have lesser power than the Veda, and when they are opposed to dictates of the Veda they become unauthoritative. For a different interpretation of this issue by Apastamba, see ch. 1.1: #8.

4. The Vedic supplements (*vedga*) are six in number: phonetics (*ik*), meter (*chandas*), grammar (*vykaraa*), etymology (*nirukta*), astronomy (*jyotis*), and ritual texts (*kalpa*: these consisting of treatises on Vedic ritual, on domestic ritual, and on dharma). Subsidiary Vedas (*upaveda*) appears to refer to treatises on medicine, archery, and the like. The term Purana (in the singular) here must refer to some kind of text containing ancient tales. See the *Bhadrayaka Upaniad* 2.4.10; 4.1.2. The term is also used several time in *pDh* 1.19.13; 1.29.7; 2.23.3; 2.24.6.

5. For the meaning of *ha,* see ch. 7, n. 102.

6. The list of the four orders is given at *GDh* 3.2 in the following sequence: Vedic student, householder, mendicant, and anchorite. So the anchorite is excluded from the assembly.

7. Note that Baudhayana, being the author of an *Aphoristic Ritual Text*, is more cognizant of the system of Vedic branches (*kh*). Gautama, on the other hand, appears to work at a level beyond the Vedic branches, where engagement with the science of dharma is a common intellectual enterprise, much like Panini with grammar, and less like engagement with a ritual text.

8. See also *BDh* 1.1.13, where Baudhayana uses the past participle *smta*, which became the traditional way of

referring to statements in the *smti* texts.

9. The reference here, perhaps, is to the methodology of inferring the existence of Vedic texts on the basis of authoritative traditions (*anumitaruti*). Note the issues we have already dealt with relating to the inferred Veda.

10. The reference is to the six Vedic supplements; see ch. 2, n. 4. Later texts take this as a reference to epics and Puranas: see ch. 8.2: #2; 3: #2.

11. That is, when the three epistemic sources mentioned in selection #1 are not available, a person may seek the advice of a legal assembly.

12. For these three, see ch. 2, n. 6.

13. The reference is to animals, such as horses, that have incisors in both jaws, while others, such as cows and goats, lack incisor teeth in the lower jaw. See Olivelle 2002b.

14. For the identification of these places, see Bronkhorst 2007: 1–3.

15. Punastoma is a Soma sacrifice performed within a single day. It is prescribed for someone who has accepted too many gifts and feels as if he has swallowed poison. Sarvaph is a sacrifice offered to Indra and said to be performed by a person seeking virility. See *rKo* I: 635.

16. For the identification of these places, see Olivelle 2000, Appendix II.

17. The latter appears to be an alternative view.

18. The meaning and reading of *pratilomakakadharma* are unclear. I follow the explanation given by Laksmidhara (*Ktyakalpataru*, *Brahmacrika*, 47). The term *kaka,* however, has also the meaning of an authoritative source in later exegetical discourse. If that is the meaning here, the translation would be "but not others, the dharmas given by degenerate authoritative sources" (the reference could be to Buddhist texts and the like).

19. The meaning of "Book of Causes" (*nidna*) is unclear. The commentator Krishnapandita takes it to mean a treatise on various regions of India. It is more likely that the reference is to an ancient work of the Bhllavins cited in the *Bhaddevat* 5.23.

20. See ch. 2, n. 4.

21. We arrive at an assembly of ten by assuming that there are four individuals, each proficient in one of the four Vedas. For the three belonging to orders of life, see ch. 2, n. 6.

3. PERSPECTIVES FROM POLITICAL SCIENCE: KAUTILYA (FIRST–SECOND CENTURY C.E.)

1. For detailed studies of this work and its compositional history, see McClish 2009; Olivelle 2013.

2. For further details, see Olivelle 2013.

3. Gain and loss: in the manufacturing process some substances, such as gold and silver, suffer loss (see *A* 2.14.8), and others, such as yarn (see *MDh* 8.397), increase in weight.

Additional weight (*prayma*): the exact meaning of this term is unclear. From *A* 2.19.24 it appears that an additional amount by weight was assessed when certain kinds of weighing instruments were used.

Admixture: the meaning appears to be the combining of different material in the manufacturing process, such as the insertion of iron in the manufacture of gold to give it the right color (A 2.14.9). For further information, see Olivelle 2013.

4. Sample (*prativaraka*): the term refers to a sample, as it clearly does at *A* 2.21.12 and probably also at *A* 2.13.57, where we have *prativarik.* The meaning appears to be that the value of a shipment is calculated on the basis of testing the quality of a sample.

Container: the box in which the items are brought to the treasury (*A* 2.7.33).

5. The reference here is to the annual accounting done on the full-moon day of June–July. All state officials and superintendents are required to come with their revenue and account books to the capital. On this annual event, see Heesterman 1985.

6. The reference is to the census carried out by the collector (*samhart*) of the countryside within the kingdom.

7. The reference is to secret agents operating in the territory of an enemy king.

8. The term used is *vyvahrik*, referring to the interest rate on commercial transactions. We see here the close connection between convention (*vyavahra*) and commerce and trade.

9. Seizure fine (*shasa*): the meaning and semantic history of this term as a particular kind of fine with lowest, middle, and highest amounts are not altogether clear. In the *MDh* (8.138)the three levels of fines for forcible seizure are: lowest 250 Paas, middle 500 Paas, and highest 1,000 Paas. The *A* (3.17.8–10), on the other hand, gives them as 48 to 96, 200 to 500, and 500 to 1,000.

4. INNOVATIONS OF MANU (MID-SECOND CENTURY C.E.)

1. I have presented evidence for the thesis of a unitary authorship in my critical edition of this text: Olivelle 2005a.

2. For a longer discussion of the significance of verses, see Olivelle 2005a: 25–27.

3. For detailed studies of this issue, see McClish 2012, 2014.

4. On this source of dharma, see the detailed study by Davis 2007.

5. These are the mixed classes or castes born through the intermarriage between the four principal classes; see *MDh* 10.8–73.

6. That is, the Self-Existent One, who is both the creator and the father of Manu.

7. At *MDh* 1.35 is a list of ten great seers produced by Manu, who are viewed as his sons and pupils: Marici, Atri, Angirasa, Pulastya, Pulaha, Kratu, Pracetas, Vasistha, Bhrigu, and Narada.

8. The pronoun "him" here refers to the Brahman, who is the principal audience of the text. He is tasked with transmitting the teachings of Manu to the other social classes.

9. Such pure and exalted Brahmans purify those with whom they sit down to eat. See *MDh* 3.183–186.

10. See ch. 7, n. 99.

11. Later texts take "amplification" (*paribhaa*) to refer to such other supplementary texts as epics and Puranas: see ch. 8.2, #2; 3, #2.

12. See ch. 2.2: #1 (*BDh* 1.1.6).

13. See ch. 2, n. 6.

14. The last two verses are also found in *BDh* 1.1.11, 16 (ch. 2.2: #2).

15. All the commentators of Manu interpret the compound *yugahrsnuprvaa* to mean "in keeping with the shortening of the ages." According to this reading, the different dharmas for the ages are caused by the decrease in their length. I think this is less likely. I prefer to connect *hrsa* (shortening) with the human life span; indeed, the same term was used with regard to human life in verse 83. According to my reading, the meaning is: "in keeping with the progressive shortening (of the human life span) in each age."

5. DEVELOPMENTS AFTER MANU

1. We see a parallel development in the medical tradition, where later texts ignore issues of epistemology and focus on practical issues such as recipes and therapy. I thank Dominik Wujastyk for this observation.

2. Medhatithi, in his commentary on *MDh* 2.6 (see ch. 7.2), rejects this enumeration of texts of recollection, saying: "For this very reason, the exhaustive list of authors of the texts of recollection: 'Manu, Visnu, Yama, Angiras,…,' is without any basis." Yet these verses appear to have entered the text of Yajnavalkya quite early. They are found in all the extant manuscripts, and are commented on by the ninth-century commentator Visvarupa. They are also given in the extensive citation of Yajnavalkya found in the *Garua Pura* 93.4–6.

3. The meaning of "others" (*itarem*) is unclear. Commentators take it to mean the intermediate or mixed classes resulting from intermarriage among the four major social classes (*vara*). See *MDh* 2.18, where the term *antarla* is used with the same meaning.

4. For the region where the black buck (*kasra*) lives, see *MDh* 2.23 (ch. 4, #4).

5. There are six Vedic supplements (see ch. 2, n. 4) and four Vedas, bringing the total to fourteen.

6. For a detailed discussion of the composition of this text, see Olivelle 2009a.

7. For the significance of the Varha incarnation, see Willis 2009.

8. The sixth of the seven nether regions underneath the earth.

9. The reference is to a sin or crime committed by a person. In Krita one abandons the region where such a person may live, while in Kali one has simply to abandon the individual who commits the sin.

6. THE SCHOOL OF VEDIC EXEGESIS

1. For excellent analyses of such debates and the intellectual history of the period, see McCrea 2012, 2013, and Forthcoming. For an extended discussion with larger extracts from Vedic exegesis, see the forthcoming book by McCrea in this series: *A Mms Reader: Classical Indian Hermeneutics.*

2. See Benson 2010: 12–13; Keith 1921: 1–9. For the early literature of Vedic exegesis, see Parpola 1981 and 1994.

3. Sabara takes up the term *artha* in the root text for comment and gives it the meaning of something good or beneficial, while its opposite is *anartha,* something that is detrimental to a person's well-being.

4. All these are rites included within the Vedic ritual repertoire but are intended to kill or harm an enemy. Consequently, they do not qualify as "beneficial" or "good" (*artha*) within the above definition of dharma. The Hawk sacrifice (*yena*) is described in detail in the *Ktr* 22.3.1–52; *aBr* 3.8; 4.2; see also Kane V: 1114 n. 1818, and 1245. It is stated explicitly that "Hawk" here is simply the name of the sacrifice; it is not the substance that is sacrificed. It is, in fact, a variation of the Soma sacrifice. The image is that the rite will strike the enemy down swiftly like a hawk descending on its prey. The Thunderbolt sacrifice (*vajra*) is also a variety of Soma sacrifice, intended to harm the whole country or region (*janapada*): see *Ktr* 22.11.28–36. The Arrow sacrifice is another variation, performed according to the rules of the Hawk sacrifice, except that it is done in a single day: *Ktr* 22.5.30; *aBr* 3.9.

5. A bedrock hermeneutical principle of Vedic exegesis is that one sentence or injunction can enjoin only one thing, not two. When a sentence does the latter, it has the flaw of *vkyabheda*, sentence split. Thus, the opponent argues, this aphorism cannot point out both these aspects of dharma.

6. The Sanskrit term for aphorism, *stra*, is derived from a verb meaning to sew or string. Thus, it is presented as stringing together many ideas. The argument is that the hermeneutical principle of split sentence does not pertain to the very peculiar linguistic field of aphoristic composition.

7. A similar rule is found at *G* 2.4.1. The Eighth-Day rite (*aak*) is an offering made on the eighth day after the full moon, generally for the benefit of deceased ancestors. The rite of *aak* becomes the standard example of a ritual not given in the Vedas but still recognized as a Vedic rite, which is thus learned only from texts of recollection.

8. A prescription similar to this is found in *VaDh* 7.12. For an extensive discussion of this rule and its Vedic precedents, see Visvarupa, ch. 7.2: p. 112.

9. I have not found this rule verbatim anywhere, but this duty is given in *MDh* 8.264.

10. I have not found a source for this injunction.

11. A topknot is a tuft of hair, normally at the crown of the head, left uncut while the rest of the head is shaved. This tuft is normally left to grow long and is tied in a knot. I have found no verbatim source for this citation, but see *VarG* 4.18. An interesting point in the order of these citations is that it follows the Sanskrit alphabet.

12. In the edition, the preceding section is not given as an introduction to the *PMS* aphorism (*stra*). But the last sentence (*tad ucyate*) indicates that the section was, indeed, such an introduction. The edition simply repeats the aphorism as part of the commentary.

13. The reference here is to the examples given above that are found only in texts of recollection.

14. For the distinction between what is found in the Veda and what is found in the world, see Patanjali's discussion in ch. 1.1: 1.

15. The sense is that people belonging to the three upper classes (*vara*) claim that their recollection, i.e., the *smti* texts, are based on the Veda. And this claim is valid, because the same people perform the Vedic sacrifices prescribed in extant Vedic texts.

16. That is, the Vedic text that is presumed to be the basis of the text of recollection.

17. The argument here is that a text once known may have been forgotten, and hence it is now subject to inference: there must have been such a text that gave rise to this recollection.

18. This mantra, cited here with just the first words (*pratka*), is given in the *PrG* 3.2.2 and the *Apastamba Mantrapha* 2.20.27: *y jan pratinandanti rtr dhenum ivyatm* |*savatsarasya y patn s no astu sumagal svh* || A variant of this is found in *AV* 3.10.2. This and the following statements are connected to the examples given in the opponent's statement in the introduction to *PMS* 1.3.1.

19. *V* 10.4.1 cd: *dhánvann iva prap asi tvám agna iyakáve práve pratna rjan* || Translation of Brereton and Jamison 2014.

20. This and the preceding passage indicate through inference the existence of injunctions regarding the construction of watering places and reservoirs.

21. The chant of particular melodies called Sman is carried out during a Vedic sacrifice by a specialist priest called Udgt. The sacrificial post is made out of an Udumbara fig tree (*Ficus glomerata*). The rule in texts of recollection goes something like this: *audumbar sarv veitavy*, "The entire Udumbara post should be wrapped" (see *MKo* III: 1344). This conflicts with a Vedic statement about touching the post, found only in the *Lr* 2.6.2.

22. The argument is that, as a direct perception cannot be annulled by a mere recollection or an inference, so a Vedic text that is directly perceivable (*pratyakaruti*), here compared to direct perception, cannot be annulled by a text of recollection.

23. The rule regarding rice or barley is a classic example of an option arising from two equally authoritative texts that enjoin two different things. There are contradictory Vedicinjunctions: "He should offer a sacrifice with rice" and "He should offer a sacrifice with barley" (*B* 11.3.1.3). The same is true with regard to the Sman that should be recited, the Bhad or the Rathantara. For a detailed discussion, see Sabara on *PMS* 12.3.10–15; *MKo* V: 2975; VII: 3803.

24. The meaning is that in the case of the prescription to touch the post, there is an explicit Vedic statement. In the case of the text of recollection prescribing the wrapping of the entire post, one has to depend on inference to establish the existence of a Vedic text that would provide its foundation. The latter, therefore, is weaker than the former.

25. This is the first interpretation, which takes this aphorism as part of the previous argument about texts of recollection that are in conflict with Vedic texts.

26. I have not been able to trace this rule. The Vaisarjana is an offering of ghee during a Soma sacrifice. See *pr* 11.16.15.

27. This exact rule is not found in extant texts, but something very similar is found in *Ktr* 14.5.35. See also *Ktr* 14.1.20.

28. See the commentary on *PMS* 1.3.2, and n. 15 there.

29. The *Holk* is referred to in *KhG* 73.1, and there the commentators say that it is done for the benefit of women. The deity is Rk, and the rite is referred to in some regions by that name. I have not been able to find much information on the other two rites. The *MKo* (2: 1022) says that the hnnaibuka is the worship of trees such as Karañja (*Pongamia pinnata* or *glabra*; Pongam oil tree). The *MKo* (2: 1134) says that the Udvabha is performed on the full-moon day of Jyeha (May–June) and consists of worshiping bulls and washing them. See Kane V: 1282–82.

30. The number of the tufts and the places on the head they were worn differed according to the lineage or Vedic tradition of each individual. Thus the *BG* (2.4) states that one should keep one, three, or five tufts according to the dharma of his family. For a detailed discussion, see Kane II: 263f.

31. For a comparison of the notions of lost scripture in Buddhism and Vedic exegesis, see Kataoka 2013.

32. The two topics (*adhikaraas*) are contained in aphorisms 1.3.3 and 1.3.4: (i) authority of the Veda is greater

than that of texts of recollection, and (ii) the unauthoritativeness of some texts of recollection is based on their having worldly motives.

33. “Different foundation” refers to such motives as greed. Here Kumarila goes against Sabara, who, as we saw in the preceding section, gives precisely this interpretation in the commentary on *PMS* 1.3.4 (ch. 6.1: #2).

34. I want to thank Kei Kataoka for helping with the interpretation of the expression *viiadhvanisthnyena tenaiva.* For the meaning of *sthnya* in the sense of “equal to,” see Panini 5.4.10.

35. The intent here is to show that even though some aspects of a Vedic text, such as the various accents and articulation of sounds through different parts of the mouth, are humanly produced, yet they do not impinge on the authoritative nature of the Veda itself as authorless. In the same manner, when a human teacher or a humanly produced text of recollection points to a Vedic passage, that by itself does not make the Vedic passage humanly produced.

36. This appears to indicate that the previous verse presents the view of an opponent acknowledging the possibility that a particular text of recollection may not be based on the Veda. Calling him derogatively, “my dear fellow,” Kumarila rejects that view.

37. These are two branches (*kh*) of the black *Yajur Veda*.

38. The situation is this. A particular text of recollection is invalided by a contrary Vedic text. But thereafter one may well discover another Vedic text that would lend support to the same text of recollection, which would then be both validated and invalidated. Kumarila’s view appears to be that every text of recollection must be *a priori* assumed to have such Vedic validation, thus giving rise to an option.

39. On this example, see Sabara’s comments on *PMS* 1.3.4 (ch. 6.1: #2).

40. The identity of this text is uncertain; this appears to be the only reference to the work. Somesvara Bhatta, in his *Nyyasudh,* commenting on this passage, calls it by a slightly different title, “*Chndyogynupapada*” (the *MKo* 3: 1733 corrects this to *Chndogyanupada*), and identifies it as a “*stragrantha*,” a text of the aphoristic genre. I thank Larry McCrea for this information.

41. The cloth for wrapping the Udumbara fig post is referred to as Vaiuta, and the process of wrapping is given in *Lr* 2.2.6.1–14. Vaiuta (from *vi* + *stuti*) is a particular arrangement of verses in the Sman chants. The word *r* here probably refers to prosperity or to the goddess of prosperity. For the *yyani Brhmaa,* see Gonda 1975: 349.

42. These “ears” are the two prongs at the top of the sacrificial post. At *Bhrr* 12.10.4, for example, a piece of gold is placed between the two prongs of the post and an oblation of ghee is offered there, which would flow down to the bottom.

43. This explanation presupposes that the Sanskrit term used for wrapping is *pariveana,* the prefix *pari* denoting the full wrapping of the post.

44. The *GDh* (2.45–47) states: “To study a single Veda, he should live as a student for twelve years, and to study all the Vedas, twelve years each or until he has grasped them.” Thus, it is given not as a rule but as an option.

45. That is, this alternative is made for a person who may want to skip the order of a householder and go directly to another celibate order of life, such as renunciation.

46. Here Kumarila returns to two possible interpretations of the *PMS* 1.3.3, which states that a text of recollection that conflicts with a Vedic text should be disregarded. The first alternative is to say that it is preferable to follow the Vedic text when the two texts provide two different options. This is stated more explicitly in the very next verse. The second is that the entire aphorism pertains to texts of groups such as the Buddhists, who are outside the Vedic pale. This last point is taken up in the next section of Kumarila’s commentary.

47. The implication is that, if following the first Vedic text and not following the other is not an offence, then following the Vedic text and ignoring the text of recollection should also not create a problem.

48. This interpretation is based on two ways of dissolving the compound *anapeka*, either as a Karmadhraya (descriptive determinative) compound: “nondependent,” or as a Bahuvrhi (exocentric) compound: “in which there is

no external dependence." In either case, the meaning would be the same. The term *pramam* (authoritative) is taken over from the previous aphorism, which is a common practice in this genre of literature. Thus, instead of a contradictory text of recollection being discarded, this interpretation makes it authoritative.

49. Here I follow Harikai's (2008) emendation. Printed editions read *kyagrantha,* which he emends following five manuscripts to read *kyanirgrantha*.

50. The word *uccana* is a technical term in the Tantric vocabulary. It is a magical act carried out by a Tantric practitioner that drives away evil forces and enemies. See the *Tantrbhidnakoa* I: 226.

51. The argument is that these texts of non-Vedic and anti-Vedic groups are popular, and therefore it is imperative for defenders of the Vedic worldview to undermine their credibility. The example given here is taken from common speech, where the term *gav* is often used in place of the correct Sanskrit term *gau*. The grammarian Patanjali (I: 8) also uses this example to show that the use of such common words does communicate the intention of the speaker, but it does not give him merit (*dharma*), because only the use of proper Sanskrit can accomplish that: see above, ch. 2.2: 3. This problem in the use of common terms, therefore, needs to be pointed out by grammarians.

52. The printed editions read *rutivihitai*. I follow Harikai's edition (2008) based on manuscript evidence: *rutismtivihitai*.

53. This is one of the rare occasions when a Brahmanical author refers to the historical reality of other countries and their acceptance of non-Vedic doctrines, in this case, probably the Buddhist. See the comments of Halbfass (1983: 15–16) on this passage. This is also an interesting insight into how Buddhist theologians may have used their newfound popularity in distant lands, such as China and Tibet, as a tool for propaganda and for propagating their faith.

54. I follow here the reading of Harikai (2008), *anubhavat tulyakakay*; the printed editions read: *anubhavatulyakakay*.

55. The issue here is the relationship between word (*abda*) and meaning. For many opponents of Vedic exegesis, including the Buddhists and Jains, this relationship is contingent and conventional. For the proponents of Vedic exegesis, however, the relationship is eternal and transcendent, especially as it relates to Sanskrit. This doctrine is the basis for their claim of the inerrancy of the Veda.

56. This statement is cryptic and not altogether clear. It may be that Buddhists and others cannot bear to acknowledge that their sacred texts are based on the same authoritative source, namely the Veda, as Brahmanical texts of recollections (in Kumarila's vocabulary both kinds are called *smti*). Jha appears to interpret the phrase to mean that Buddhists cannot bear to acknowledge the Veda as the foundation because they think their own texts are equal in authority to the Vedas.

57. The fourteen repositories are: the four Vedas, Puranas, logic, hermeneutics, treatises on dharma, and the six Vedic supplements. See *YDh* 1.3, cited in ch. 5.1: #1.

58. This is the Shudra; and here Buddhists are considered Shudras by definition, confirming the suspicion I expressed (2004c: 40) that Manu and others use Shudra as an indirect way to refer to the Buddhists.

59. The expression *alakrabuddhau* has caused problems of interpretation. Jha, in his translation, takes it to be the title of a Buddhist text. No such text exists, however. I want to thank George Cardona and Ashok Aklujkar for help in interpreting this difficult sentence. The meaning is that for the Buddha, what others may consider a transgression of his dharmais viewed as an adornment to be proud of. For a similar expression and citations of this passage, see Rajasekhara, *Kvyamms* (C. D. Dalal; Gaekwad's Oriental Series, 1), ch. 8, p. 38.

60. Gautama is the author of the foundational text on logic, the *Nyya-stras*, and the reputed founder of the system of logic. These are the so-called orthodox systems of philosophy that acknowledge the supremacy of the Veda.

61. This is a paraphrase of *MDh* 4.30.

7. EARLY COMMENTATORS

1. Asahaya's commentary is of little use for issues concerning the epistemology of dharma, because his root text, that of Narada, deals only with legal procedure.

2. McCrea (2010: 123) states: “More notably, though, most writers on Dharmastra seem to have had little or no interest in the epistemic justification of the authority of Dharmastrain general, or of the specific texts they were concerned with. They seem prepared to take this authority for granted, and devote themselves instead to the specifics of interpretation: trying to determine exactly what actions the *dharmastras* prescribe, rather than explain just why it is that we should believe them.” This is certainly an accurate description of how the epistemic issues are dealt with by jurists and commentators of the medieval period beginning around the twelfth century (see the next chapter). As we will see, the early commentators, represented here by Visvarupa and Medhatithi, are deeply engaged with these issues.

3. For a detailed discussion of the interaction between Buddhism and Brahmanism, see Bronkhorst 2011.

4. For the best and most detailed discussion of Bharuci, his works, and his date, see Derrett 1975, I: 4–27.

5. See ch. 6, n. 4.

6. An injunction of this kind is not found anywhere in the Vedic texts. Professor Wezler (personal communication) has noted that this may be a case of an “invented” Vedic text; it is cited most frequently in discussions of noninjury (*ahis*).

7. All editions read: *te atruvadhalaka prtim anuhyamn nirvartayanti*. I think the original reading was *anuyamn nirvartayanti*, and the scribes/editors, taking the first word to be a feminine nominative, changed it to the accusative to agree with the preceding two feminine accusatives. However, before the operation of external sandhi, the original was *anuhyamn* (nominative plural agreeing with the subject *te*). The verb *anutihati* is used with regard not to internal feelings but to external actions.

8. This view is in direct contradiction to that of Sabara (ch. 6.1: #1).

9. This kind of inference (*anumna*) is called *smnyato da.* For a discussion of it in the commentary of Medhatithi, see Wezler 1999.

10. In my critical edition, the reading here is *viclayet* (“he should not transgress”), but the reading in the manuscript accompanying Bharuci’s commentary is *vicrayet*.

11. The Sanskrit term I have translated as “general norm” is *vyavasth*, which often means a legal decision. But the term appears to mean in these early commentators (also Visvarupa and Medhatithi) a general norm or legal principle, as well as specific rules enacted by groups or prevailing in various regions: see Medh on *MDh* 7.13. The exact meaning, however, in these contexts is not altogether certain (see Introduction, p. 45). See Bharuci’s use of the same term within the context of legal procedure in ch. 12.1: #1.

12. Bharuci here uses the word *laukikadharma*, clearly distinguishing this kind of dharma from the Vedic dharma (*vaidikadharma*). We have seen this distinction already in Patanjali.

13. The manuscript I used for this translation is Ms. T 555 of the University of Kerala Oriental Manuscripts Library, Trivandrum. Unfortunately, it is incomplete, breaking off in the middle of the section on the Vedic student.

14. Three colleagues—George Cardona, Albrecht Wezler, and Ashok Aklujkar—have helped me in various ways in understanding the prose of Visvarupa. But even they sometimes confessed to not fully comprehending his lines of thought. I thank them for their help.

15. The reference by the opponent is to the definition or hallmark (*lakaa*) of dharma given in the preceding verse: “When an article is given by individuals imbued with the spirit of generosity, at a proper place and time, to a worthy recipient, and following the proper procedure—that is the entire definition of the Law” (*YDh* 1.6).

16. The meaning is that the category of Brahman is broader in scope than renouncer (*parivrjaka*) and includes the latter; not all Brahmans are renouncers, but all renouncers are Brahmans, at least according to Brahmanical theology. The enumeration of the latter separately in a statement such as: “Brahmans should be fed, and also wandering ascetics,” is meant to emphasize the special position of the latter within the broader category. See Jacob 1907:37; see Samkara on *VeS* 1.4.16. So here the category of text of recollection (*smti*) would implicitly include practice (*cra*), but it is singled out as a special category.

17. The meaning here is not altogether clear. Perhaps what Visvarupa intends to say is that when a sundry text is cited as “*smtyantara*”—a very common practice in medieval texts—it is done by memory and not directly from a

written text. When there is an actual text, then the name of the author is mentioned. So here we have a hint as to how the *smtyantara* category was used: when one remembered a floating verse and could not pin it down. Here, as in other places, *artha* is probably an abbreviated compound standing for *padrtha*, which, in Vedic exegesis, had acquired the meaning of an enjoined act. The subcommentary on Visvarupa, the *Vacanaml*, confirms this meaning. It says that a *smtyantara* is not made into a composed text (*upanibandhana*) either because there are an innumerable number of them or because they contain optional material.

18. There is an explicit statement regarding this kind of renunciation in the context of a calamity befalling one's family in the opening verses of Vidyaranya's *Jvanmuktiviveka* (nandrama Sanskrit Series, 20; Pune, 1901, p. 1): *putradraghdn ne ttklik mati |dhik sasra itdk syd virakter mandat hi s* || "Fie upon this cycle of existence—should this be the thought lasting but for that time, a thought springing up at the loss of one's wife, children, house, and the like, it is considered the faint level of detachment."

19. The subcommentary *Vacanaml* refers to Visvarupa's introductory comments on *YDh* 3.45.

20. This sentence is corrupt: *tanmlatvaniyamoparasmte*. *DhKo*, V: 136, puts a question mark after it. My translation is tentative. The subcommentary does not comment on this phrase.

21. The meaning of the cryptic statement (*samnam anyat*) is unclear. Perhaps it simply says that the rest of the explanation of "desire arising out of right intention" is the same as the one given previously. See the similar expression *iti samnam* ("the rest is the same as above") in the *A* 5.1.13, 52; 7.6.32; etc.

22. Here we have a curious and, as far as I know, unique explanation of the different sources listed by Yajnavalkya. The well-known four aims of human existence (*pururtha*), also called the quadruple set (*caturvarga*), are pleasure (*kma*), success/wealth (*artha*), dharma itself, and ultimate liberation (*moka*). The source of dharma is, in all likelihood, the first three: Veda, texts of recollection, and the practice of good people.

23. The subcommentary *Vacanaml* also makes clear that the long passage from here until "To this we respond" (Author's Response) presents various viewpoints of opponents in order to refute them seriatim. Some confusion is created by this method, because some opposing views are actually refuted not by Visvarupa but by another opponent of the first opponent. The subcommentary states: *atraiva matantara darayma | iha smtimlatva prati vivadante vdina | tatra svapakasthpanrtha pakntari vikalpya nirkroti kuta punar itydi dauhitrasmaraavad ityantena ||*

24. The meaning is that having a few statements with a Vedic foundation makes texts of recollection not different from Buddhist and other false scriptures, where one can find some statements that agree with Vedic texts. This point is also made by Kumarila (ch. 6.2).

25. It is not altogether clear what "its opposite" (*viparyaye*) refers to—perhaps that the texts of recollection are not founded on the Veda, which is the understanding of the subcommentary *Vacanaml*, which glosses: *vedmlatvbhve* . One may thus infer that these texts are not founded on the Veda, because the Veda cannot be understood as forming the foundation of everything. Indeed, the rest of the opponent's argument is precisely aimed at undermining the claim that the Veda is the foundation of texts of recollection.

26. The reference is to the *kalpastra*s, consisting of the aphoristic texts on solemn Vedic rites, on domestic rites, and on dharma. See ch. 1.1, p. 52.

27. The edition reads *jyotio 'pi hi*, but I think this was an attempt by the editor to "correct" the difficult original reading, *jyotio 'pi hi*, which is given clearly by the subcommentary *Vacanaml*, with the explanation: *jyotiomasypty artha*.

28. The following 41 verses composed by Visvarupa are terse and aphoristic, and cannot be translated without copious notes. I have omitted them. They are aimed at explaining and undermining Kumarila's argument that texts of recollection are based on scattered Vedic texts.

29. As the subcommentary *Vacanaml* makes clear, this first view rejected by Visvarupa is that of Kumarila Bhatta. The same view will also be rejected by Medhatithi.

30. In Vedic exegesis, only injunctions with a verbal form expressing, directly or indirectly, an obligation to perform specific acts are the meaningful elements within the Veda; they are independent. All other elements of Vedic texts, especially the mantras and explanatory statements (*arthavda*), become meaningful only in relation to something other than themselves, that is, to the injunctions. See ch. 1, n. 7.

31. The technical term *liga* (indicative sign) refers to the second of the six modes (*prama*)that accompany an applicatory injunction (*viniyogavidhi*), which indicates the connection of a subsidiary element with the main action. See *MNP* 66f., 90f.

32. The meaning is that the mantras referred to in the injunction on the daily Vedic recitation have as their object the murmured recitation (*japa*). Therefore, they do not require any other rite, and are thus neutral or indifferent with respect to other rites.

33. *V* 10.4.1 reads: "I begin the sacrifice to you and I propel my thought to you, so that you will become the one to be extolled at our invocations. You are like the first drink in a wasteland, o fire, for Pru who seeks to attain you, you age-old king" (tr. Brereton and Jamison2014). The translators comment: "The usual high points of the birth and growth of Agni are covered in this hymn. What gives the hymn its character are the concentrated and somewhat unusual images that are studded through it. This is already evident in vs. 1, where Agni (who is fire, after all) is compared to 'the first drink in a wasteland'; presumably the point of comparison is that both are eagerly desired and it is not certain they will appear." The Author's claim is that the content of the explanatory statement embedded within this mantra demands the existence of an injunction compelling people to construct water booths. For this and the following examples, see Sabara on *PMS* 1.3.2.

34. The *TS* passage reads in full: "Now confusion occurs in that they perform the same thing with a better and worse (instrument), for the ass is worse than the horse; they lead the horse in front to avoid confusion; therefore the worse follows after the better." This passage deals with the ritual practice of placing the horse in front of the donkey as they are being led. This explanatory statement demands the existence of an injunction to validate the practice.

35. The term *vyavahra* (translated as "expression") is glossed by the subcommentary *Vacanaml* as *abda* (word or statement). I think this interpretation is correct, because the reference is to explanatory statements (*arthavda*) that may form the basis for the inference of a corresponding injunction.

36. The edition reads *viparyya* (inversion), but the subcommentary gives the reading *viparyasa* (error, delusion, misapprehension), which I have followed. It parallels the other term *bhrnti* (mistake) used in this passage.

37. This expression (*vijñnaghana*) is probably a reference to the Vijñnavda school of Buddhism. This expression is also used by Samkara (on *VeS* 2.2.28) in his refutation of Buddhist doctrine, even though it does not appear to have been used by the Buddhists themselves. See also *Bhadrayaka Upaniad* 4.5.13, which has *prajñnaghana*. The subcommentary *Vacanaml*, however, takes this simply as a reference to this Upaniadic passage.

38. This is a very condensed argument. According to the subcommentary *Vacanaml*, the statements of those with unimpaired eyesight can be a basis for arriving at reality, and so are the Vedic statements. That is why there is no flaw in the argumentation.

39. The argument is that such statements serve only a ritual purpose (*kratvartha*) and are not intended for the person performing the rite (*pururtha*). The subcommentary *Vacanaml* supports this interpretation with the maxim: *phalasannidhv aphala tadagam*, "when something is given in close proximity to an act that is fruitful, then it is a subsidiary element that does not have its own fruit" (see Sabara on *PMS* 4.4.19). Here, an explanatory statement cannot form the basis of a rule in a text of recollection, because that statement is subsidiary to the original Vedic injunction and not fruitful on its own.

40. A name, especially that of a deity or a sacrifice, does not have any injunctive power and thus cannot provide a foundation for dharma. The utility of names and their connection to the results of a ritual act are dealt with extensively in the literature of Vedic exegesis: see *MNP* 249f.

41. This same argument, as we have seen, is used by Kumarila, even though he would not support this opponent's view that texts of recollection lack authority.

42. These are two branches (*kh*) of the black *Yajur Veda*.

43. A Vedic school called *caraa* is generally taken to be a synonym of Vedic branch or *kh* (see *MKo* III: 1679; Panini 4.2.46). Visvarupa, however, appears to distinguish the two, using the former for the tradition of transmission and the latter for the texts so transmitted.

44. For the limbs (*aga*) or supplements of the Veda, see ch. 2, n. 4. The argument here is that mere retention (

dhraa) is not the same as actual recitation (*pha*), where the exact words of the Veda are recited verbatim. Mere retention is the same as recollection, and thus these texts would fall into the latter category.

45. The vows (*vrata*) and recitation (*adhyayana*), as shown in the several texts cited by the subcommentary *Vacanaml*, apply only to the Vedas and not to other texts such as the Vedic supplements and texts of recollection. This is taken as the reason these texts cannot be eternal, because they do not have a tradition of recitation in which their exact wording would be preserved.

46. The edition reads: *smtayo nity iti*. My reading of the tenor of the arguments makes me inclined to see an *avagraha*. The reading would then be: *smtayo 'nity iti*, in the negative.

47. The list headed by Manu referred to here is that of *YDh* 1.4–5. This list leaves out several authors of treatises on dharma; one such list is headed by Narada, and includes Pulaha, Gargya, Pulastya, Saunaka, Kratu, Baudhayana, Jatukarna, Visvamitra, and Pitamaha (cited in the subcommentary *Vacanaml*).

48. The reference is to the views of the adherents of the schools of logic and Yoga, who claim that the Vedas are authoritative because they were authored by the Lord or Brahman.

49. The reference is to the treatise of Manu.

50. The argument is not altogether clear, and the subcommentary does not offer much help. If this rule referred to the study of the entire text of Manu rather than to individual injunctions, the argument appears to say, then the reference would have to be to the original composition (this appears to be the meaning of the term *prakta* used here) that Manu received from his father, the Creator. The verse immediately preceding this verse stated: "Manu, the wise son of the Self-Existent, composed this treatise" (*MDh* 1.102). Already in the introduction to the *NSm* (in Jolly's tr.), we have the belief that Manu's original treatise consisted of 100,000 verses arranged in 1,080 chapters; and this work was subsequently abridged by Narada and others. Its enormous extent makes it impossible for any being, let alone a human being, to be capable of studying it in its entirety.

51. The subcommentary *Vacanaml* explains that texts of recollection clarifies and explicates the meaning of the Veda.

52. The subcommentary *Vacanaml* explains that here the opponent, who also subscribes to the eternality of texts of recollection, rebuts the arguments made thus far by saying that what has been said does not apply to him. The difficult compound *parvtticaturaprajñsahy* is explained thus: *parvttau paradaabhage catur payas prajñ buddhir ye sahyo bandhu*. This may also a reference to Buddhist philosophers and logicians. See the term *parvtti* (*parvtta*) in Edgerton's *Buddhist Hybrid Sanskrit Dictionary* (New Haven: Yale University Press, 1953), 320.

53. The text in the edition reads: *sannikaphal kydaya | aniyataphal cakdaya* ||The contrast between the fruits of the two in this reading makes little sense. I have followed the reasonable emendation proposed by the editors of the *DhKo* (V: 139): *sanikaphal kydaya aniyataphal ca*, *asanikaphal niyataphal cakdaya*. The reading of the edition was probably created by haplography. This passage is not commented on by the sub-commentary *Vacanaml*.

54. The argument here is that the parallel between agriculture and acts such as the Eighth-Day rite given in texts of recollection does not imply that both are simply based on worldly practice. The author maintains that the latter both is well established in the tradition and can only be gathered from these texts.

55. This is a very concise and cryptic sentence. A lot is implied, and my translation is not literal but attempts to state what *may be* the meaning. I am indebted here to the explanation provided by Professor George Cardona. The subcommentary *Vacanaml* does not comment on this passage.

56. The meaning appears to be that the authors of the texts of recollection gathered together those enjoined acts that were not found in the extant Vedic texts and presented them in textual form (*upanibandhana*). The subcommentary *Vacanaml* gives the missing first half of this verse: *kacic chio 'tikruyt sarvadharmgamrthavit | agranthaknm arthn cakropanibandhanam* || "A certain cultured individual who knew the acts of all the scriptures relating to dharma, because of his immense compassion, presented in textual form acts that were not contained in written works." I take *artha* as an abbreviation of *padrtha*, which, as already noted, has the meaning of an enjoined act or rite in the tradition of Vedic exegesis.

57. The citation is somewhat elliptic but is derived from the *Aitareya Brhmaa* 5.32 and 5.34. See also *Kautaki Brhmaa* 6.12; *khyana rautastra* 3.21.1–6. The passage is cited by Sabara on *PMS* 12.3.16. The reading of the

edition, *yady ukto*, should be corrected to *yady kto*. This passage deals with expiations (*pryacitta*) to be performed for ritual flaws, using *bhr* for flaws in gvedic recitations, *bhuvas* for flaws in Yajurvedic recitations, and *svar* for flaws in Smavedic chants. The text ends with flaws where the precise Veda is unknown. The opponent's point here is that the "unknown" (*avijñta*) is equated to expiations contained in texts of recollection, and these are actually not derivative of Vedic injunctions. The text of the *Aitareya* in Keith's translation reads: "To the gods said Prajpati 'If there is trouble in your sacrifice from the c, do ye offer on the Grhapatya, with '*bh*'; if from the Yajus, with '*bhuva*' on the Agndh's altar, or on the Anvhryapacana at oblation sacrifices; if from the Sman, with '*svar*' on the havanya; if (the trouble) is unknown or a complete failure, running through all '*bhh, bhuva, svar*', do ye offer on the havanya only.'" For further treatment of this text, see Benson 2010: 317.

58. The meaning is that this way a text unknown to a particular individual would be granted the status of having a Vedic foundation, even if it does not.

59. The argument seems to be that if texts of recollection (*smti* s) containing these unknown expiations are themselves based on the Veda, then these expiations would not be unknown. The claim that they are unknown can only be sustained if the texts of recollection are independent of the Veda.

60. The reference and the argument are not altogether clear. The editors of the *DhKo* (5: 139) give the following explanation. When the king is vigilant, the transgressions of the bounds of good conduct are not tolerated. So, when we are vigilant your transgressions of the bounds of proper reasoning will not be tolerated! Likewise, as women married to men who are virtuous and capable of protecting them are not independent, so texts of recollection embraced (lit., taken in marriage) by the Vedas—which are authoritative on their own, thus imparting authority to them through their subservience—do not become independent.

61. The reference is to actions such as the Eighth-Day rite that are viewed as Vedic even though they are found only in texts of recollection.

62. The subcommentary *Vacanaml* identifies this kind of worldly practice as that of the Buddhists and the like. The invariable concomitance is lacking here because the Buddhists do not base the authority of their scriptures on inference but on the immediate perception of the truth through yogic insight (*yogipratyaka*).

63. Here, Visvarupa makes a distinction between *vidhyartha* (an act enjoyed by a Vedic injunction) and *kriy* (just any act that a person may perform).

64. The meaning appears to be that acts such as the Eighth-Day rite are supposed to produce results that come about long after the rite has been completed, and thus are not connected to the immediate outcome. This is different from normal worldly activities, where the result comes soon after the completion of the activity, for example, the harvest after the agricultural activity. Only the Vedic injunction can point to such a long-distance connection between an act and its result; but those who support the view of the independent authority of the texts of recollection, such as the Buddhists, do not accept the authority of the Vedas.

65. This refers to the thesis that texts of recollection are not independently authoritative. The opponent of Visvarupa has been presenting arguments in favor of such independence.

66. The subcommentary *Vacanaml* gives here the reference given earlier: "Accordingly, he states: 'He presented in textual form acts that were not contained in written works.' Sacred scripture also, after introducing: 'If from the c,' and after saying: 'from the Yajus; from the Sman,' states: 'If unknown.' And tradition states: 'And what is unknown is what is in texts of recollection.'"

67. I have emended the reading of the edition, *smtyarthe 'bdhdarant*, to *smtyarthe bdhadarant*, which is the clear understanding of the subcommentary *Vacanaml*.

68. The edition here reads *asdikam* ("without a visible motive"). I do not think this makes sense, because not having a visible motive is characteristic of Vedic injunctions. I have thus emended the text to read *sdikam*.

69. The subcommentary *Vacanaml* gives here the same reference as in n. 66.

70. The argument here is that a statement without an injunctive verb (e.g., the optative) may well be construed as an injunction if it deals with a subject unknown from elsewhere. In this context, the eating of the Soma is enjoined even though the sentence contains the verb in the indicative (*bhakayati*: *TS* 6.4.9.4).

71. For this example, see Sabara's comments on *PMS* 1.3.1 (ch. 6.1: #2).

72. This passage is ascribed to Sankha-Likhita in *DhKo* V: 70. The entire text reads: *mnyaprmyd cra sarvem upadiyate*. By "practice" here the reference is to the "practice of good people" given as the third source of dharma in the root text of Yajnavalkya.

73. The reading in the edition is corrupt. The subcommentary Vacanaml clearly identifies this as the text of Baudhayana; see ch. 2.2: #1.

74. I have been unable to identify this quotation. The subcommentary *Vacanaml* also does not give a specific reference, but simply says that Vedic texts such as *TS* 2.2.10.2 and several texts of recollection he cites show that Manu was an expert in the Veda.

75. The subcommentary *Vacanaml* gives several examples of the enumeration of authors of texts of recollection, including *YDh* 1.4.

76. This verse is probably Kumarila's own composition presenting five alternative possibilities with respect to the composition of texts of recollection. It is given at the beginning of his commentary, *Tantravrttika*, on *PMS* 1.3.2. The verse is very concise and aphoristic. The meaning is that there are five assumptions with regard to the rules given in these texts: they may be (1) due to error, (2) based on personal experiences of the author (which have no authority), this being the position of Buddhists and other yogins, according to the *Vacanaml*; (3) based on what others may have told the author; (4) the result of a willful desire to deceive on the part of the author; and (5) based on what the author had directly seen in Vedic texts. The last is the only reasonable assumption, according to Kumarila.

77. For the hermeneutical principle according to which a sentence cannot indicate two things, see Sabara, ch. 6.1: n. 5. Thus, the injunction on recitation makes one assume the existence of another injunction on teaching, because without teaching one would not be able to know, let alone to recite, the Veda.

78. Every injunction enjoining the performance of an act presupposes a person eligible to perform it. This is called by the technical term *adhikra*, qualification or eligibility. So there is another type of injunction called *adhikravidhi* dealing with who precisely is eligible to perform a particular enjoined act.

79. The subsidiary element (*aga*) here is the order in which the various acts in a rite are performed. This order is given in the six so-called *prama*s, modes of evidence: direct statement (*ruti*), sense (*artha*), text (*pahana*), position (*sthna*), chief matter (*mukhya*), and procedure (*pravtti*). For a detailed explanation of these, see *MNP* 199f.

80. This exposition is found in Visvarupa's commentary on *YDh* 1.14, as pointed out by the subcommentary *Vacanaml*.

81. This is a direct rebuttal of the opponent's view expressed on p. 112: "*Therefore, given that it would result in the denial of an enduring self, it would be difficult to sustain conventions based on Vedic injunctions*."

82. The meaning of *upaplavamna* here is unclear. I follow the subcommentary *Vacanaml*, which takes it to mean *upagacchan*, having probably the meaning of conforming or corresponding; the instrument must correspond to the nature of the substance. You cannot take ghee with a knife.

83. This is a rather complex argument of the opponent, a complexity compounded by Visvarupa's rather convoluted syntax. The gist of the argument is that, according to the proposal of Visvarupa, all rules found in texts of recollection would be derived through inference of one rule from another. The rather complex example of the Sruva spoon goes something like this. There is a rule to divide the ghee into four portions, which makes us infer an instrument such as a spoon. The injunction to divide the ghee using the Sruva spoon further calls for a rule to take the ghee up with this spoon, because ghee cannot be divided (cutup) like a cake, given that it is a liquid.

84. "Name" (*samkhy*) is the sixth of the means of knowing a rule of ritual application (*viniyogavdhi*) (*MNP* 66f). Here, the opponent's assumption is that the mantras associated with the daily Vedic recitation have names within them that refer to the Eighth-Day rite (*aak*). This is denied by the author, because the ritual formulas are already associated with *japayajña*.

85. The Sanskrit words used in this passage, *smrthya* and *akti*, are technical terms within the vocabulary of Vedic exegesis and refer to the capacity of words to signify, and are often used as synonyms of *liga*, the indicative force of words and one of the six means of knowing (*prama*) referred to in an earlier note. *MNP* 90, 100, 103.

86. See ch. 13, n. 107.

87. The Sanskrit term *reyas* generally refers to anything that is truly beneficial to someone, and, as Rau (1957: 32–34) has shown, it generally refers in the Vedas to rich people as opposed to the poor (*ppyas*). It is frequently used in later literature with reference to the highest good, that is, final liberation from the rebirth process. It is often difficult to ascertain the exact meaning of this term within a specific context. Manu himself, however, provides a handy definition at *MDh* 2.224: “Some say that dharma and wealth (*artha*) are conducive to prosperity; others pleasure (*kma*) and wealth; and still others, dharma alone or wealth alone. But the settled rule is this: the entire triple set [i.e., dharma, wealth, and pleasure] is conducive to prosperity (*reyas*).” Medhatithi (on *MDh* 2.6; ch. 7.3: #4; p. 127), for example, claims that agriculture is also a cause of prosperity and gives a useful definition of the term.

88. This other work of Medhatithi is referred to elsewhere in his commentary as *Smtiviveka* (see Medh on *MDh* 2.6 under #4; p. 130). It was probably composed in verse. This work has not survived. See Kane I: 582.

89. For *kalañja* as red garlic, see Sabara on *PMS* 6.2.19; *MNP*, Edgerton’s note to 320. Both Sabara and *pDh* 1.17.26 give *kalañja* along with garlic and onion.

90. See Medhatithi’s commentary on *MDh* 8.41 (below, ch. 12.2: #3), where he says that these dharmas were instituted by a distinguished ancestor within each lineage.

91. Here *bhya*, “outside, external,” may be an abbreviated compound for *vedabhya* found in *MDh* 12.95. But given the term *bhya* is used in the very next paragraph with reference to Buddhists and other non-Vedic ascetics, it probably refers to these outside groups whose texts, although often bearing the name *smti*, are nevertheless without authority. So I take the compound *bhyasmti* here and elsewhere in Medhatithi as a Tatpurua compound.

92. It is the general view within the mainstream Brahmanical tradition represented by Vedic exegesis that the Veda has no author, whether human or divine; it is, therefore, self-existent. As such, the knowledge presented in the Veda is self-validating (*svata-prmya*), just like perception. Even though perception is falsifiable through a later and more certain perception, this is not so in the case of the Veda, because there is no subsequent knowledge that can falsify or invalidate it.

93. For the meaning, see ch. 7, n. 91.

94. The reference is not altogether clear, but there is a class of Brahmans who are called Bhojakas. They were probably on the margins of orthodoxy, being connected in some way, possibly through intermarriage, with Iranian religious ideas and rituals. See H. von Stietencron, *Indische Sonnenpriester: Smba und die Skadvpya-Brhmaa. Eine textkritische und religionsgeschichtliche Studie zum indischen Sonnenkult* (Wiesbaden: Harrassowitz, 1966). Later in this same paragraph they are in a list along with Pancaratrikas and Pasupatas.

95. The reference is to the series of previous Buddhas according to Jha; but given the next sentence, the root or basis for the authority of Buddhist texts is the Buddha himself and his superhuman vision, and this basis has come down through an unbroken series of reciters of his words. The good and bad courses are the rebirth process. The editions of Jha and Gharpure read *bhikm* in the genitive, and Jha translates: “good and bad conditions of Bhikus.” A variant in five manuscripts recorded by Gharpure reads: *bhikva*. I think this is probably a wrong transcription of *bhikave*, written in the old Ngari *phamtr*. Now, this is not standard Sanskrit, but the form is found in Pali and even more significantly, in Gandhari Buddhist manuscripts from northwestern India. Perhaps Medhatithi, living in Kashmir, had access to these kinds of Buddhist texts. We do find texts similar to the one he cites in several Buddhist texts: *paymy aha bhikava divyena caku viuddhentikrntamnuyakena satv cyavant upapadyant suvar durvavar sugat durgat*…(*Mahvastu*, ed. Senart [Paris: Imprimerie Nationale, 1882–97], III: 448). See also *Mahvastu-Avadna* 3.448; *Saghabhedavastu* I.158.

96. The identity of *anrthavda* (or *nrthavda*) is unclear. The explanation of the *EDS* (4: 2160, with the reading *anarthavda*) is not helpful: “one of the heterodox sects (lit. having senseless deliberations).” The edition of *DhKo* (V: 90) gives the reading *anryavda*, but this is probably an emendation of the editors, and is also the *lectio facilior*. Perhaps, coming immediately after *nirgrantha* (Jain), the original reading may have been *anekavda*, which is what Jain philosophy is sometimes called. James Hartzell has drawn my attention to a passage in the Buddhist text *Klacakratantra* (edition of the Central Institute of Higher Tibetan Studies, Sarnath: 1986–1994, 87) where Buddhists are divided into four groups, one of which is the *arthavdin*. Another possibility, pointed out by Professor Wezler in a

private communication, is that the reference is to the Ajivakas (Basham 1951). Their philosophy of *niyati* or fatalism/determinism would make all efforts such as rituals and asceticism ultimately meaningless (*anartha*). But the term remains obscure.

97. A sect or religious group called *sasramocaka* is referred to also by Kumarila, Jayanta, and others. This group has been investigated by Wezler (1976: 329–48) and by Halbfass (1983:10–11; 1988: 329). They claim that killing is justified because it releases those killed from the cycle of births and deaths (*sasra*).

98. It is unclear whether these are simply given in the ritual literature, or whether they are, in fact, Vedic rules. I have been unable to identify them. It could also be that these rules are given according to their meaning (*arthata*) and not cited exactly as they may be found in a text.

99. There are conflicting rules regarding the holding of a vessel called oain, one saying that the sacrificer holds it and another saying that he does not. See *TB* 16.1.8. Likewise, one rule says that the morning fire sacrifice should be offered *before* sunrise (*TB* 3.8.16.4), and another says that it should be offered *after* sunrise (*TB* 3.8.16; 5.1.33). The general hermeneutical rule in such cases is that the contradiction creates an option. The opponent's argument, therefore, is that a similar option should be permitted between acts prescribed in available Vedic texts and acts prescribed by the scripture of these outside groups that contract the prescriptions of the Veda, because such acts may indeed be based on lost or unavailable Vedic texts. This argument sounds very much like that of Kumarila supporting his thesis of a scattered Veda.

100. For an exhaustive discussion of this source of dharma and the opinions of later commentators and scholars, see Davis 2007.

101. I have been unable to trace this citation.

102. The two terms used here, *ha* and *apoha*, in general refer to the process of analytical reasoning. The former is the ability to deduce proper conclusions, while the latter is negative argumentation aimed at refuting false views. A verse given in several sources presents these as qualities of the mind: *ur ravaa caiva grahaa dhra tath* | *ho 'poho 'rthavijñna tattvajñna ca dhgu* || "Desire to learn, study, comprehension, remembering, reasoning, rejection, knowing the meaning, and knowing the truth are the eight qualities of the intellect." *Kmandakya Ntisra* 4.22. See also *A* 1.5.5. These are probably the ones referred to as the "eight elements of intelligence" (*buddhy agay*) in a passage added after *Rmyaa* 6.101.22; see the translation by Goldman et al., 1415. The same verse is given in three manuscripts after *MBh* 3.2.16 or 17.

103. Here Medhatithi begins his actual gloss on the verse, commenting on each word. I have put the words taken from the verse for comment in bold type.

104. This is the broadest division of the Veda, *mantra* consisting of ritual formulas and *brhmaa* consisting of everything else, but especially the injunctions.

105. Note that Jha's first edition and Mandlik have the reading *prmyahetu*, while Gharpure has *prmyaparijñne hetu*. The second edition of Jha has *prama parijñne hetu*, which I have followed.

106. See ch. 7, n. 87.

107. The reference here is to an unseen and mysterious effect called *aprva* that the ritual act creates in a person. This explains how the effect of the ritual act, for example, heaven, happens after a long time. Generally, this would go against the normal principle of causation. It is this *aprva* that connects the cause and the effect over a period of time.

108. The Sanskrit expression is *yvajjvam*. We have the injunction *yvajjvam agnihotra juhoti* ("He offers the daily fire sacrifice all his life") in *Varr* 1.1.1.86; and *yvajjva darapramsbhy yajeta* ("He should offer the New- and Full-Moon sacrifices all his life") in *pr* 3.14.8, 13.

109. This principle, encapsulated in the maxim *vivajit-nyya*, is explained in *PMS* 4.3.10–16. It states that when no result is explicitly mentioned, one must assume that the result is heaven.

110. See ch. 1.2: #1.

111. Some glosses on Sanskrit terms are omitted here, because they make sense only within the context of the Sanskrit syntax and have little relevance to the English translation.

112. This example of a type of inference, known as *prvavat-anumna* (inference of an effect from the perception of its cause), is given in Vatsyayana's commentary on *Nyya-stra* 2.1.38–39.

113. The author of the *Vivaraa* is Bharuci. See the headnote to the section on Bharuci (ch. 7.1).

114. For the *Smtiviveka*, see ch. 7, n. 88.

115. The reference here is to *PMS* 1.3.2; see Sabara's commentary on this in Ch. 6.I.

116. Here Medhatithi appears to be saying that even though we know that there is a close connection between the rules contained in the texts of recollection and the Veda, it is not possible or wise to state exactly what this connection is. Later in this passage he will be more explicit: "Therefore, Manu and others are undoubtedly linked to the Veda with respect to this issue. It is, however, impossible to determine the specific nature of that link" (see ch. 12.2: p. 133).

117. In what follows, Medhatithi comments on the alternative explanations given above under Roman numerals.

118. *pDh* 1.12.10: see ch. 1.1: #5.

119. Ritual injunctions are often divided into those that pertain to the ritual act itself (*kratvartha*) and those that pertain to the ritual actor (*pururtha*). The former consist of rules of ritual procedure, such as the rule that the rice to be used should be husked by pounding. This serves a ritual purpose directly and benefits the ritual actor only indirectly. The latter, on the other hand, serve the purposes of the actor. An example would be the rule that a person who desires heaven should perform sacrifice. See Kane V: 1232–35.

120. The statement is from the *TB*, 23.2.4: *pratitihanti ha v ete ya et upayanti* | *brahmavarcasvino 'nnad bhavanti ya et upayanti* || "Those who have recourse to these sacrifices become well established. Those who have recourse to these become endowed with Vedic luster, they become eaters of food." This is cited by Sabara on *PMS* 4.3.17 also to show that the present tense can carry injunctive force.

121. All three sentences of the above *TB* passage have indicative verbs. There is a syntactic unity among them, because they follow each other sequentially.

122. The reference is to the theft of gold and drinking liquor in *ChUp* 5.10.9 mentioned earlier.

123. That is, the doctrine of the five fires.

124. This *TB* passage is cited in Sabara's commentary on *PMS* 1.4.29. Here we have the injunction to put pebbles that have been wetted. We do not know the liquid with which they are wetted, but the explanatory statement immediately following this refers to ghee, from which we gather that the pebbles should be wetted with ghee. But the situation envisaged in the objection is dissimilar to this, because the explanatory statement does not immediately follow the injunction.

125. For the classification of injunctions (*vidhi*) into these four, *utpatti* (originative), *adhikra* (eligibility or qualification), *viniyoga* (application), and *prayoga* (performance), see Kane V: 1228.

126. The special offering of ghee in the offering fire (*havanya*) is called *ghra*. Here the mantra contains the words "Indra" and "Vishnu," which indicate that the offering is made to these deities. See *TS* 1.1.12; Keith's tr. I: 14, and note 2 there, which gives the variant formulas in the different Vedic branches.

127. Having four feet indicates the completeness of dharma. Manu (1.81–82; see ch. 4.8)says that in the golden Krita Age dharma possessed all four feet, but in each subsequent age one of its feet was lost, so that in the current Kali Age only one foot remains.

128. The Smidhen verses are *V* 3.27.1; 6.16.10–12; 3.27.13–15; 1.12.1; 3.27.4; 5.28.5–6, which total eleven verses. The number fifteen is obtained by repeating four verses. See *r* 1.2.2–22. For the set of fifteen and seventeen and the hermeneutical issues involved, see Sabara's commentary on *PMS* 10.5.27–33. The meaning appears to be that the original eleven verses are contained within the fifteen; it is unnecessary to look at the seventeen.

129. This fault consists of an infinite regress where each member in the line depends on the previous, which also needs validation. See the argument from a line of blind people given by Sabara: ch 6.1, #2.

130. The positive concomitance (*anvaya*) between X and Y is needed in order to deduce the presence of Y when X is perceived. Thus one deduces the presence of fire when one sees smoke. But if smoke has never been perceived by anyone at any time, then it is impossible to base a deduction on the basis of smoke. The opposite of this is the

negative concomitance (*vyatireka*), where there is not even one case where smoke may be present without fire.

131. This and the following statement are very pithy and leave a lot to be understood. It is implied that there are some things we do infer without actual perception, for example, the motion of the sun. We really cannot perceive its motion, but we assume that it must move in order to be perceived in different places, in the same way as we know that motion is required for a human being to get from one place to another. The particular kind of inference is called *smnyato da*, that is, through an inference based on a generally observed principle, such as that motion is required for an entity to be observed in one place at one time and at another place sometime later (see Wezler 1999). This is similar to but distinguished from circumstantial inference, dealt with in the next statement.

132. Circumstantial inference (*arthpatti*) can be employed when a perceived reality cannot be accounted for in any other way than the one postulated. Thus, going from one place to another cannot be accounted for in any other way than by motion. The classic example is Devadatta, who is fat but does not eat during the day. So we must infer from the circumstances that he must eat at night. In the current case, however, the lack of other possibilities does not obtain, because it is possible for Manu and other writers to have simply erred or wanted to deceive others.

133. The issue is clearly dharma, which is the topic under discussion.

134. The new explanation still refers to the phrase in the original verse: “The recollection and conduct of those who know the Veda.”

135. See the *Dhtupha* (ed. in *Word Index to Panini-Stra-Pha and Pariias*, V. S. Pathak and V. S. Chtrao, Bhandarkar Oriental Research Institute, Poona: 1935), 523: *la samdhau*.

136. The Sanskrit here has a copulative (*Dvandva*) compound *smtile* (re collection conduct), and Medhatithi’s labored explanation is focused on explaining how the compound can be understood in such a way as to make *la* qualify *smti*. The explanation is based on a particular kind of copulative compound called *itaretara* (see Patanjali on Panini 2.2.29; I: 434, 9–11). Here the two members of the compound are not independent but dependent on each other, the classical example being *plakanyagrodhau* (fig and banyan).

137. The Sanskrit reads *smtile ca* (and), which is problematic for Medhatithi’s explanation. So he tries to move *ca* to a position after the last compound: *tadvidm* (of those who know it).

138. Perhaps “the science of logic” (*nyyastra*) here may refer to a treatise on logic, specifically to the *Nyya-stras* of Gautama.

139. This enumeration is found in Visvarupa’s version of *YDh* 1.4–5.

140. These are significantly omitted in the list given by Yajnavalkya.

141. The identity of the Pni hymn is unclear, but the *pr* 21.13.8 identifies the ten formulas given at *TS* 3.3.5.1 as the ten mantras associated with Pni (see *MKo* 5: 2604). The reading of this sentence is corrupt. Mandlik and Jha read: *pniskta tapayo ’dhyate avamedham ava yath samarpayanta*. Gharpure reads: *pniskta tapayo adhyate vamedhamtra ghsa samarpayanta*, without giving any variants but with a reference to Sabara’s commentary on *PMS* 2.4.2.8. Gharpure probably emended silently the received text following Sabara, who gives the practice among some: *avamedham adhyn kecid avasya ghsam haranti*. I think the original reading of Medhatithi was something like the following: *pniskta tapayo ’dhyate avamedham avasya ghsam arpayanta* (or perhaps, *avamedhvasya*). It is likely that there is a confusion between the Avamedha section that is studied according to Sabara and the Pni-skta given by Medhatithi. Perhaps both are the object of the verb *adhyate* (“they recite”).

142. The same observation is made by Maskarin in his commentary on the *GDh* 1.2. The enormous number and variety of customary practices make it impractical to collect them all in one book.

143. This appears to be a salt mine located in Rajasthan. The origin of this maxim is unclear, but the meaning is that the salt in the mine overpowers and makes salty anything that may fall into it.

144. The example is derived from the Atirtra ritual where this prohibition is found. However, in other contexts, holding the vessel according to rule is proper, the prohibition being circumscribed to that ritual context. In the case of prohibitions that give satisfaction, the author argues that they are limited to contexts outside of that contentment. So the prohibition is inoperative when a learned person finds satisfaction in that act.

145. The example is poignant. People may say that whatever plant a mongoose chews is made into a destroyer of

poison, but the truth is that a mongoose actually chews only those plants that already have the capacity to destroy poison. In like manner, whatever the cultured elite may find pleasing is dharma only because they find pleasure only in what is dharma.

146. This section is found in *MDh* 5.110–127. However, I do not find any statement in that discussion referring to the contentment of the self, although in some cases a person may clean a thing until he is satisfied that it is completely clean (*MDh* 5.126).

147. The Sanskrit term is *para*, which generally means “the highest.” This term, however, has another meaning, namely “other” or “different”; hence my translation, in this context, “farthest,” hoping to capture both meanings of the Sanskrit. The clear meaning of the term within the verse is highest, but Medhatithi is uncomfortable with the idea that the highest dharma could be obtained from an untouchable Candala. He is thus forced to resort to the second meaning of the term.

148. See Medhatithi’s commentary on *MDh* 1.2 given in section #2.

149. The sixfold strategy with the technical name *guya* is explained in Kautilya’s *Arthastra* (7.1), and is also listed in *MDh* 7.160: peace pact, initiating hostilities, remaining stationary, marching into battle, seeking refuge, and double strategem.

150. The terms *arthastra* and *dharmatra* in this context have been interpreted by commentators to refer not to Kautilya’s *Arthastra* but to the sections of treatises on dharma that deal with matters of politics and law (e.g., chs. 7–9 of the *MDh*), and to other sections of those same texts that deal specifically with dharma.

151. The editors have the reading *sainikai*, “by soldiers,” and Jha gives this very translation. This makes little sense. I think the original was *saunikai*, “by butchers.”

8. MEDIEVAL COMMENTATORS AND SYSTEMATIZERS

1. This was already pointed out by McCrea (2010: 128).

2. See Kane I: 411 for references.

3. Olivelle 1995: 30.

4. Vedic exegesis accepts only injunctions as meaningful and as epistemic sources of dharma (see the long discussion on this in the section of Medhatithi in ch. 7.3). However, other sections of the Veda, especially the mantras and explanatory statements (*arthavda*), are viewed as attached in some way to injunctions, and thus make syntactic wholes. Thus, they also can be an indirect source of dharma. See ch. 1, n. 7; ch. 7, n. 30.

5. See the long discussion on this in Medhatithi, ch. 7, pp. 126–27. It is unnecessary to mention this, because it is already known, but it is done so as to teach why texts of recollection also are authoritative.

6. Even Kane (1962–75) does not have a section devoted to him or even make any remarks about him or his works.

7. Here the singular is used with reference to a class of texts, and thus indicates all the Vedic texts, not just one.

8. That is, there is an assumption or inference that there must be a Vedic injunction serving as the foundation of the conduct.

9. The meaning of the expression *tmaguasapad* is unclear. The parallel term *tmasapad* is found in the *A* 6.1.6 with a long list of qualites necessary in a good king.

10. This is part of the story of the god Dharma, who in the guise of a demon killed all four of Yudhisthira’s brothers. When Yudhisthira had answered the demon’s question, he got to choose which brother would live. He chose Nakula, even though he was not his uterine brother. *MBh* 3.297.65f. See Hiltebeitel 2011: 420–53.

11. Here Kulluka repeats the argument of Govindaraja and Medhatithi on *MDh* 2.6 (see ch. 7.2: #4, p. 124): “After reiterating the authoritativeness of the Veda that is established through reasoning, this verse communicates verbally the fact that the texts of recollection, such as that of Manu, have the Veda as their root.”

12. I give here the translation of Vijnavesvara’s reading of the verse, which differs somewhat from that of Visvarupa, that I have adopted in translating this verse in ch. 5.1: #2.

13. The reference is to the age when a boy is to undergo Vedic initiation.

14. See the edition and translation of this text, with a substantial introduction, by J.A.B. van Buitenen: *Ymuna's gama Prmyam or Treatise on the Validity of Pañcartra* (Madras: Ramanuja Research Society, 1971).

15. Following *DhKo* V: 143, I emend *nivrya* of the edition to *nirdhrya*.

16. The Sanskrit *samcna* (being proper) is meant to explain the term *samyak* (right) in the compound *samyaksakalpaja* (arising out of right intention).

17. See ch. 6.1: #3 (n. 29).

18. Verses 1.217–218 give the times for performing an ancestral offering (*rddha*), and the list ends with this statement, after which the author says: "these are declared to be the times for performing an ancestral offering." Apararka limits the scope of this source of dharma to such instances.

19. That is, other than the sources given in this verse. The reference is to the dharma of outside groups such as the Buddhists, as well as Shaiva and Vaishnava sects.

20. Here begins a long digression concerning the authority of the sacred scriptures of various sectarian traditions, both Shaiva and Vaishnava.

21. The meaning appears to be that the inner kernel that contains the edible meat of the coconut is the Shaiva; the outer hard shell is the Kaula; and the dry fibrous husk parallels the Vedic rites. Thus far, I have been unable to identify these verses, although they must derive from a Shaiva Agama.

22. The lunar penance (*cndryaa*) is a fast that follows the waning and the waxing of the moon. The *MDh* (11.217) describes it: "He should decrease his food by one rice ball a day during the dark fortnight and increase it likewise during the bright fortnight, bathing three times a day—tradition calls this the lunar penance."

23. Found in *Dev Pura* cited in *DhKo* V: 284, but not in Sharma's edition of the text.

24. The maxim *yvad vacana vcanikam* expresses a common interpretive strategy. A rule or a law cannot be made to state more or less that its words expressly say. That is, laws have to be understood literally. See Sabara on *PMS* 5.3.12; and Kane V: 1348.

25. Most of this description is found in *Yoga Stra* 1.24.

26. See n. 23 above.

27. The term *siddhnta* is a generic term referring to the Shaiva sacred treatises.

28. This is a syntactically convoluted verse. But the intent appears to be to present an "etymological" explanation of the term *pupata* that would undermine the authority of the texts bearing that name. The author uses the term *pau* (a tame or domesticated farm animal) used commonly in the Pasupata vocabulary to refer to an individual soul, in contradistinction to god, Shiva, who is called *pati* (a term that can refer to the Lord as well as to a shepherd looking after the animal herd). Here, however, the word *pata* in *pupata* is derived not from *pati,* as is normally done, but from the fact that the *pau*, by giving up his *pau* nature, has become fallen (*patita*). It is this fallen nature of the *pau* that is conveyed by the term *pupata*, thus robbing it of any authority. Such a fallen person parallels "those who have abandoned the path of the Veda" of the previous verse.

29. The *Nivsa* (perhaps more correctly *Nivsa*) *Sahit* is one of the earliest Shaiva scriptural texts. It has been recently edited and translated by a team of scholars headed by Dominic Goodall (Forthcoming).

30. Vedic links refer to any type of ritual relationships, such as officiating at an initiation or a sacrifice, teaching, studying, and the like.

31. These seven traditions and their respective interpretations of the syllable O are given in the *BYogYSm* in the verses following this citation: 2.69–103.

32. For an examination of this argument and of the interaction between Shaivism and Brahmanism in the medieval period, see Sanderson 2006b.

33. The reference is to Panini 4.3.101. Apararka gives here the manner in which the term *aiva* is derived from the original *iva* according to the metarules of Paninian grammar. Here there is the addition of *a*, which creates the Vddhi strengthening of the initial vowel (Panini 4.1.83).

34. The technical term *luk* refers to an elision of a sound after some grammatical operations. Thus, one who studies a Shaiva treatise is also called "Shaiva."

35. The Sanskrit term *jti* has a double meaning. The first is birth or biological species; the second is the sociological division of human society into castes. Here the author uses this ambiguity to classify the entire biological/social universe into ten species/castes. I have not been able to identify this passage.

36. This is an implicit reference to the passage of Vyasa cited earlier: "Those who desire the purity of dharma do not want anything other than the Veda. It is the pure source of dharma; others are said to be mixed."

37. The passage in the *Bhaviya Pura* deals with the definition of a teacher called *mahguru*, Great Teacher. The first line of the passage, which is omitted in the citation, reads: *jayopajv yo vipra sa mahgurur ucyate*—"The Brahman who makes his living from Jaya is called Great Teacher." And it appears that the list of texts represents the category of texts called *jaya*, Victory. There is an alternate reading in the edition of this Purana: in place of *saur ca mnavokt*—"Sauras (relating to the sun) declared by Manu," it has *raut dharm ca nradokt*—"Vedic dharmas declared by Narada."

38. This passage is ascribed by both Aparарka and Madhava (*PrM* I.1: 133) to the *Brahma Pura*, and by Devanna Bhatta in his *Smticandrik* (I: 29) to the *di Pura*. See *Brahma Pura* 213.164.

39. The meaning of the expression *mlakarma* is quite unclear. The commentators of Manuare unanimous in taking it to mean some kind of witchcraft by which another person is brought under one's power (*vakaraa*): see *MDh* 9.290, where the meaning is clearly some form of witchcraft. In Vatsyayana's *Kma Stra* (4.1.9 and 6.2.56) also the reference appears to be to some form of magic potion made with roots to win the love of a woman. See also *AV* 4.28.6, where *mlakt* (root cutter) is in apposition to *ktykt* (witchcraft maker).

40. The meaning of "the mother and the Veda" is unclear. The compound *mtveda* may also be rendered "the mother Veda." The *sthpaka* is a particular official in the hierarchy of adepts. He is distinguished from the *crya* in the *Matagapramevara gama*, Kriypada, ch. 10. Both undergo a special initiation rite. See, however, the different definitions of these two terms given in the *Matsya Pura* cited below.

41. I have not been able to trace these verses in the published edition of the *Matsya Pura*.

42. For the limbs or the supplements of the Vedas, see ch. 2, n. 4.

43. For the definition of this sacred region and its relationship to dharma, see *MDh* 2.23, cited above in ch. 4.4.

44. The two terms used here, *ha* and *apoha*, refer to the two elements of rational analysis; see ch. 7, n. 102.

45. I am not sure whether the reading here is correct. If it is, the meaning is quite obscure. For the "repositories of knowledge" (*vidysthna*), see *YDh* 1.3; ch. 5.1: #1.

46. The reference is to the above citation from the *Dev Pura*.

47. The meaning of this simile is unclear. The eyes of a partridge (*cakora*) are believed to drink the nectar of moonbeams, and they turn red in the vicinity of poison (*A* 1.20.8). Perhaps the eyes are viewed here as stealing the moonbeams, just as this person steals someone else's dharma. The term *ruci* (*paradharmaruci*) for pleasure is interesting, because it also means light and color. There may be a poetic interpretation here, where the man who performs another's dharma is a thief in the same way as the eyes of a partridge that become red in the presence of moonlight. I thank Joel Brereton for this insight.

48. Regarding the Vedic supplements, see ch. 2, n. 4.

49. The reading of Aparарka is *arthair dardhai sayuktam*. The meaning of *artha* here is uncertain: category, subject, etc. It is unclear what the fifteen are. The critical edition of the *MBh* has the reading *abdair dahasayuktam*, whose meaning is equally opaque.

50. This is a variant of the text found in ch. 5 of this Upaniad. Note that the Sanskrit for soul is *pau* (animal) and for snare is *pa*. See n. 28 above.

51. The *krukas* are a Shaiva sect regarded as inferior to the Tantrik Shaivas. They are considered impure, and contact with them is avoided by other Shaivas. See *Tntrikbhidhnakoa* II: 92.

52. Here Apararka returns to explaining the original verse of the *YDh*.

53. See ch. 2, n. 10. Apararka himself appears to take the term as referring not to the Vedic supplements but to

other authoritative texts such as the epics and Puranas.

54. This half-verse is not found in the critical edition of the *MDh*.

55. The meaning here is that these sources of dharma permit us to infer a Vedic text as their basis, thus making that Vedic text perceptible.

56. See the section on Vasistha: ch. 2.3: #2.

57. That is, such a practice would not have either a worldly or a Vedic basis.

58. For this translation I have used the edition of Srinivasacharya (Mysore: 1914).

59. “Guru” refers to Brihaspati, who is the teacher of the gods. “Yogin” here probably refers to Yajnavalkya, who is often called Yogi-Yajnavalkya.

60. This verse is not found in the editions of the *ViDh*. For the Vedic supplements, see ch. 2, n. 4.

61. For the eighteen Puranas, see selection #1: Authoritative Texts.

62. I have here emended the text from *dharmajñnnm*, which is pleonastic because the knowledge of dharma is repeated later, to simply *jñnnm*.

63. The reference is to the tying of a bracelet on the bride at a wedding. This is already mentioned in Medhatithi’s comments on this verse in ch. 7.2.

64. The term *aktrima* here means that the Veda is not authored or composed by anyone. This refers to the mainstream view that the Veda is *apauruеya*, without a human or divine author.

65. This verse is not found in the extant text of Manu.

66. See ch. 1.1: #8. The reading here is somewhat different from the original.

67. This verse is not found in the extant text of Manu.

68. The reading here, *anmnte* (in a matter not scripturally laid down), is different from the edition of *GDh*, where the reading is *anjñte* (in a matter that is unknown); see ch. 3.1: #3.

69. For the meaning of *ha* (reasoning), see ch. 7, n. 102.

70. For this text of Baudhayana, see ch. 2.3: #2.

71. For this example, see ch. 7, n. 99.

72. For the Vedic supplements, see ch. 2, n. 4. The Pada text of a Veda presents the words separately, where all the euphonic combinations (*sandhi*) between words have been dissolved. The Krama text is an artificial version devised to assure the faithful preservation of the original text. In the Krama version each word is repeated with the word that follows. For example, if we represent the words with *a*, *b*, *c*, *d*, the Krama text would read: *ab*, *bc*, *cd*, etc.

73. This is a verse with a very difficult syntax; different readings are given in different texts that cite it (see *DhKo* V: 163). I follow the interpretation given by the editors of the *DhKo*, which fits the context of denying Shudras the eligibility to study the Vedas. The intention appears to be to say that the non-twice-born individuals, such as Shudras, are entitled to some rites but not to Vedic rites.

74. “Arhat” probably refers to Mahavira, the founder of Jainism. Carvaka was considered the founder of the materialist school of philosophy; see Bronkhorst 2007: 307–28, 363–66.

75. See n. 19 above.

76. For this citation, see ch. 2.2: #3 and n. 13.

77. For the interpretation of these verses, see ch. 4.8 and n. 15 there.

78. See ch. 8, n. 22; “painful fasts” are a set of penances called *kcchra* (see *MDh* 11.212–22).

79. In these two verses, the reference is to interaction with a sinner or a person who has fallen from his caste. In the former, what is to be abandoned becomes more restricted; in the present Kali Age, one has only to abandon the perpetrator. In the latter, the reference is to pollution resulting from interacting with a sinner. In the Kali Age, one is polluted “by action,” probably meaning by contracting ritual connections with that person. See ch. 5.3.

80. Here dharma refers to merit that one acquires through religious activities. See Medhatithi in ch. 7.3: #2.

81. A traditional method of religious suicide. One walks toward the north or northeast without food or water until one drops dead.

82. Given that there are two mealtimes in a single day, fasting for six mealtimes would mean fasting for three days.

83. The meaning is unclear. Gharpure, in a note to his translation, cites some texts that forbid the drinking of "new water," that is, water from new rainfall.

9. THE BEGINNINGS

1. The term *ligata* can mean adjudication through any kind of sign, even forensic evidence, that may lead to the truth, witnesses and other kinds of legal evidence being only one aspect.

2. See Kane (III: 246), who interprets this use of the term by Gautama as "the means of deciding a matter."

3. Two Sanskrit terms in this sentence are problematic. The first is the verb *pratyhtya.* This verb is not found elsewhere in the literature and is not even given in dictionaries. It must mean something like bringing forward—that is, getting the facts from people in each group. These "facts" are referred to as *artha*, whose meaning in this context is unclear, given its vast semantic compass. I have translated it as "affairs" to include both the actual facts of the case and any rules of the association that may govern those facts.

4. For a study of the semantic history of this term, see Olivelle Forthcoming; Introduction, p. 44.

5. For the Vedic supplements and the unclear category of subsidiary Veda (*upaveda*), see ch. 2, n. 4.

6. The two commentators, Haradatta and Maskarin, differ in their interpretations. According to the former, the false witness should be held responsible for killing that number of animals or men and should be punished accordingly. Maskarin thinks that slaying means bringing ruin to that many of his ancestors. But see the passage of Baudhayana given in the next section.

7. The Sanskrit simply has the verb in the third person ("he should") without a subject. The commentator Haradatta and Jolly, in his translation, think that the reference is to the defendant. But the entire discussion concerns the questioning of the witnesses, and I think here also the subject of the verb is the witness.

8. Clearly, here the term *adharma* refers to the sin or demerit acquired by a sinner or criminal, just as dharma often refers to merit rather than to laws or rules.

9. Baudhayana uses here the term *sabhsad* (one sitting in the court), which is probably related to Gautama's *sabhya* (assessor).

10. See *MDh* 8.18, cited in ch. 10.2: #2.

11. The person who should question the witnesses is referred to simply by a verb in the third person: "he should." The person doing the questioning is left unidentified. It is likely that the reference is either to the king or adjudicator called *prvivka*.

12. The meaning of *mnuyahna* is unclear. Jolly takes the expression to mean persons who lack human intellect, in other words, sociopaths, while the commentator Govinda takes it as a reference to persons who do not have relatives.

13. The *Kma* are the four verses found in *T* 2.3.

14. See the identical provision in the *A* 3.8.1.

15. *Vei* as a technical term for the property of brothers who have formed a common household after dividing the ancestral property is unique and only given by the commentator Krishnapandita. Likewise, the term *dhmaikh* for wages (*bhti*) is taken from the same commentator's explanation.

16. For the meaning, see ch. 9, n. 6.

17. Verse 35 is so corrupt that it is not possible to translate it.

10. THE EARLY THEORISTS

1. For a study on the use of Kautilya's original composition by Manu, see McClish 2012, 2014.

2. I have opted to translate *dharmastha* as “justice” in preference to the normal “judge” because many civil matters, besides trying court cases, are part of his portfolio. For example, at *A* 2.1.30 a man has to get his permission to become an ascetic; at *A* 3.4.35 a widow needs his permission to remarry; at *A* 3.12.14 a man holding a deposit needs his permission to sell it when the depositor cannot be found; and at *A* 3.16.10 an owner discovering a lost or stolen property gets him to seize it. He was probably part of the second-tier bureaucracy (he is not listed in the salary list of *A* 5.3), as opposed to his higher-level counterpart, the *prade* (magistrate), who is listed as one of the *mahmtra*s (high officials). We have in the justices of peace somewhat of a counterpart, and at least in the Anglo-American system, justices can also have judicial functions. There may be a historical connection between the three justices (*dharmastha*) of Kautilya and the three assessors (*sabhya*) noted in many treatises on dharma.

3. For the qualities that are required of a minister (*amtya*), see *A* 1.9.1. It appears that a large number of officials carried this rank.

4. The term *avastha* falls into desuetude in later literature when it is replaced by *pratibh*. We find its last use in *MDh* 8.60, which is dependent on Kautilya, where the term has been misunderstood by all commentators and translators, except for one brief gloss by Medhatithi.

5. See my discussion of this unusual term in both Kautilya and Manu in Olivelle 2004b.

6. For a detailed discussion of the four feet of legal procedure, see Olivelle and McClish 2015.

7. For a discussion of these criminal courts, see Olivelle 2012c.

8. The repetition *tray as traya* has been taken distributively by all translators, the first referring to *dharmastha*s and the second to *amtya*s. Thus, Kangle translates: “Three judges, (all) three (of the rank of) ministers.” We have, however, a nice parallel to this repetition in Panini 1.4.101 that speaks of three triads (*tias tri tri prathamamadhyamottam*), glossed by the Kik commentary as *tray as trik*. A similar usage is found in the *Taittirya Prtikhya* (1.3; 1.10), the repetitions *dve dve* (in twos) and *pañca pañca* (in groups of five). The meaning in our passage also seems to be that benches consisting of three justices each should try cases. This, of course, contradicts the provisions of treatises on dharma, where a single learned Brahman judge substitutes for the king in a court of law, even though he is assisted by three assessors (*sabhya*).

9. I have emended the reading of the text (*tirohitntaragranaktrayopadhyupahvaraktn*) here to read *tirohitn*, thus placing it outside the compound. Here I follow the suggestion of Rocher (1978: 20), with which Kangle also appears to agree (“*ktn* is to be construed with *antaragra* onwards”) even though he maintains the above reading. Indeed, at *A* 3.1.6 we have the adjective *tirohit* outside a compound and qualifying *vyavahr* (implied [*anuvtti*] from *A* 3.1.2) while all the other words (*A* 3.1.7–11) compound with *kta*: e.g., *antaragrakt*. In all likelihood, a haplography has occurred here in the dropping of “*na*” in *tirohitnantaragra* -.

10. See ch. 3, note 9.

11. These two technical terms, consignments and deposits (*nikepa*, *upanidhi*), have a broad range of meanings. In the current context, the former probably refers to the raw material a client may give to an artisan for manufacturing an article. Given the reference to secluded women, who are forbidden to venture out of their homes, this appears to be the meaning; see the consignment of raw material for making yarn brought to the homes of such women at *A* 2.23.11. These are dealt with in *A* 3.12.33f. Deposits (*upanidhi*), on the other hand, refer to pledges or other items deposited in the care of someone. These pledges generally are used as collateral for loans: see *A* 3.12.1f.

12. The reference is probably to people such as tavern keepers and prostitutes.

13. “Secret association” (*mithasamavya*): the term *samavya* (*A* 1.13.2; 3.1.25; 4.7.17; etc.) refers to any type of gathering, especially when there is an agreement to pursue a common goal. The most common secret association is consensual sex that constitutes the Gandharva kind of marriage (*A* 3.2.6). But secret associations extended further than that (see *A* 3.12.52).

14. The context for all these provisions is a joint family where the property remains undivided. Generally, the authority for property transactions rests with the head of the family, normally the father. If the father has retired, then the authority falls on his oldest son, and the father himself is regarded as a dependent. A brother excluded from the

family probably refers to a brother who has either left or been cast out. The commentary *Cakyak* gives the alternate reading *nikalena* (for *nikulena*), which is interpreted as an impotent brother. All such individuals are incompetent to conclude a valid transaction.

15. "Person given as a pledge" (*hitaka*) means someone given to a creditor as collateral. During the time the person is a pledge, he or she resembles a slave and cannot act independently: see *A* 3.13.6, 16.

16. The age of majority in ancient India was sixteen years for a male and twelve years for a female (*A* 3.3.1). At the other end, seventy years is viewed as the cut-off point; anyone older that that becomes incompetent to execute a transaction.

17. The reference is not to what immediately preceded but to valid transactions noted earlier (*A* 3.1.6–11).

18. This appears to be a rider to the conditions of a valid transaction listed above. Within each familial, social, or economic group (*varga*), the prevailing customs regarding valid transactions should be honored, within the limits set forth in the rest of this provision.

19. It is a general principle, well articulated in *YDh* 2.23, that the proof of a later transaction is stronger than that of an earlier one. Thus, if someone proves that he lent money to someone, that proof is thrown out if the borrower can prove that he returned the amount at a later date. The *YDh* gives three exceptions: pledge, gift, and purchase. In these three cases, the earlier document is more powerful than a later one, because once these transactions are made, the other person does not have the legal power to alienate the property. The term *dea* (directive) is unclear. I have followed Kangle in taking this to mean a charge given to a person to perform a certain function at a distant location (see *A* 3.12.18).

20. The term *vivdapada* has the technical meaning of the various subjects within which a lawsuit may be filed (also called *vyavahrapada* in later sources). This meaning is clear in its use at *A* 4.7.17. In other places, however (see *A* 3.16.38; 11.1.4), a less technical meaning of legal disputes or filing lawsuits may be intended. Given that writing is involved here, I think the more technical meaning extending to the actual facts of the current case is intended.

21. The referent is unclear. The verb here is given in the singular, even though at the outset (*A* 3.1.1) there are three justices in the court. Either the reference is to a court recorder or clerk, or we are confronted with material from a different source, such as a treatise on dharma, that did not recognize a bench of three judges. Nevertheless, note the presence of three assessors (*sabhya*) as part of the court even in treatises on dharma.

22. The term *karaa*, which I have translated as "time," is a division of a day. There are eleven such divisions, and they correspond roughly to one half of a lunar day (*tithi*). Kangle and Meyer, in their translations of the *A*, take the term to refer to some sort of government office, but why it should be repeated along with *adhikaraa*, which probably refers to the court hearing the case, is unclear. Coming after the day (*divasa*), I think it more likely that the term refers to a division of time. See the use of *vel* (time of day) at the same position in a citation given by Vijanesvara (on *YDh* 2.6; ch. 13.1: #1; *KtSm* 124, cited by Devanna Bhatta, ch. 13.2: #5).

23. This implies that the plaintiff and the defendant agree with regard to the accuracy of what has been recorded. If not, changes will be made to the official record. See *YDh* 2.6–7.

24. The meaning of *dea* has been long misunderstood. Commentators take it as a reference to witnesses, and Shamasastry misses the point altogether, taking the term to mean a question. Kangle comes closest when he takes it to mean evidence. As I have shown elsewhere (Olivelle 2004b, 2005a; see also Samozvantsev 1980–81: 355; Vigasin and Samozvantsev 1985:137), in both Manu and Kauilya the term *dea* refers to legally valid documentary evidence. This was the earliest designation for what would be termed later *lekhya*. The plaintiff, after first promising to produce a document, either does not do so or produces a faulty or defective document (*hnadea*) or a non document (*adea*), which probably means a document that is unacceptable in a court of law. For this term, see also *A* 3.16.29.

25. The meaning of *purua* in this context is unclear. It can refer either to an official or, more commonly, to subordinates and servants of such officials. The context here is a court that travels to places where sessions are held. The losing party is liable for the costs of such travel and other court costs.

26. The reading and the meaning here are unclear. The manuscripts read *aga*, whereas Kangle has adopted the reading *aa*, which, according to him, is the reading of the Malayalam commentary. Hartmut Scharfe, however, in a personal communication tells me that neither *aa* nor *aga* is found in the Malayalam commentary, which gives this

gloss: "The loser shall give the interrogating officer one-eighth of a Paa as expenditure." In either case, the meaning is opaque. Kangle, following Shamasastry, translates: "one-eighth part (of a *paa*)," while Meyer, adopting *aga*, takes it to mean one and one-eighth Paas. This sort of expression, however, is never used with regard to a Paa. The text is probably corrupt, but, if *aa* is the correct reading, it must refer to some sort of share given by the defeated party to these servants (see *dvyaa* at *A* 3.5.8).

27. I take *samavya* as a separate and fourth exception. Kangle takes it together with the preceding and translates: "association in caravans." For *samavya* as an association, often secret associations, see *A* 3.1.11; 3.12.52; 4.7.17.

28. That is, the defendant has offered his response (the plea) to the plaint of the plaintiff. After receiving this response, the plaintiff has to offer his own reply that very day.

29. If the party being sued admits the claim made by the plaintiff, that would be the best outcome. This may be the course intended when the *MDh* 8.49 speaks of *dharma* as the first course in settling a lawsuit, because here the outcome is in accord with the truth. When an admission is not forthcoming, then a trial with witnesses ensues.

30. The reference appears to be to the witnesses who initially had the backing of both parties. Their testimony is superior to that of other witnesses. See also the term *nibaddha* (listed) used by Gautama (ch. 1.2: #2), which probably has a similar meaning.

31. Other sources, including the *YDh*, which depends heavily on the *A*, permit a single witness in specific contexts: see *MDh* 8.77; *YDh* 2.72. The intent here may be to preclude a single witness specifically in litigations regarding debts.

32. These appear to be individuals who worked in some official capacity for an entire village and, given that they are mentioned in the salary lists (*A* 5.3.23), may have had official standing. They may have had independent means, like the traders, and thus would have been able to have the work of cultivation carried out when land was seized from cultivators (*A* 2.1.11). It is unclear whether the term is used here in the more common sense to mean a lowly and poor servant carrying out menial tasks for the village. Thus, for example, at *A* 5.2.11, remnants are left from heaps of harvested crops for use by mendicants/beggars and village servants.

33. That is, a man who presents himself as a witness on his own (*svayavdin*), without being formally nominated or appointed by either of the parties to the dispute. See *NSm* 1.143.

34. The meaning appears to be that the justices should simply divide the claim equally between the two litigants.

35. In the *MDh* (8.138) the three levels of fines are: lowest 250 Paas, middle 500 Paas, and highest 1,000 Paas. The *A* (3.17.8–10), on the other hand, gives them as 48 to 96, 200 to 500, and 500 to 1,000.

36. For a detailed study of this statement, see Olivelle and McClish 2015.

37. See n. 35, and ch. 3, n. 9.

38. The story of the sage Mavya is narrated in the *MBh* 1.101. Once some thieves, with soldiers in hot pursuit, came to the sage's hermitage while he was observing a vow of silence and hid there with their loot. When the sage would not reply to the soldiers' questions, and finding the thieves in his hermitage, they impaled him. Learning the truth, the king removed him from the stake, but he could not pull the stake out. A part of the stake (*ai*) remained embedded in his anus, and thus he came to be called Ai-Mavya. The *A* version of the story is some what different in that here the sage does not remain silent but confesses to a crime he did not commit, fearing torture. For a study of the legal significance of this story, see Wezler 1997.

39. This section is found in *A* 3.12.38–51.

40. It is difficult to come up with this number with the text and the readings we have. There are eleven kinds in passage 22 and four in 21. One possible way to arrive at eighteen is to regard the two thigh bindings, two scorpion bindings, and two hangings as six kinds of torture, which is the solution offered by Ganapati Sastri. Prof. Wezler (personal communication)thinks that a line in 22 may have been lost due to haplography. This is possible, especially because one fails to see how drinking gruel would make a difference in burning a finger of a man.

41. *Kharapaa* literally means something like "hard/rough tablet," and the reference is unclear. It may be the title of a treatise or of a chapter dealing with the mechanics of torture.

42. These are obviously various ways a justice may become partial to one party in a lawsuit by making it difficult

or impossible for the other party to bring the matter to court. The first three acts all involve some kind of verbal threat. For the final item we have the verb *abhigrasate*. It is a hapax in the *A* and is not recorded in any dictionary either. Its literal meaning should be something like "swallow up." I think the meaning here is that the justice "swallows up," that is, makes the lawsuit disappear by suppressing it in some way. We have the related word *graseta* in *MDh* 8.43, where it clearly refers to the suppression of a lawsuit brought by a private individual.

43. The person imposing penalties on the justices for malfeasance appears to be the collector (*samhart*; see *A* 4.9.18, where magistrates also are the targets of punishment), while both the collector and the magistrates exercise control over superintendents (*A* 4.9.1).

44. See n. 35 and ch. 3, n. 9.

45. Namely, eight times the amount under litigation. For this provision with regard to false witnesses, see *A* 3.11 .45.

46. The dependence of Manu on the *A* has been amply demonstrated by McClish (2009, 2012, 2014). As already noted, the *A* underwent a drastic redaction sometime after Manu.

47. See *MDh* 8.79, 181; 9.234; and ch. 13, n. 51. See my study of the term *prvivka* in Olivelle Forthcoming.

48. For more detailed comments on these selections, see my notes to the translation in Olivelle 2005a.

49. For the presence of counselors (*mantrin*) in a court, see *VaDh* 16.2 (ch. 9.4: #1).

50. The image here is of dharma (justice) that is pierced by a dart, which is injustice itself, and which the court is obliged to remove. The commentators Bharuci and Medhatithi, however, give a different explanation. Dharma is pierced by a dart when a judge decides wrongly and permits a miscarriage of justice to occur in his court. If the other officials of the court let it go unchallenged, then they are themselves wounded by this dart.

51. Here there is a play on the sounds of the Sanskrit terms, a kind of folk etymology. Bull is *va*; to impede is *ala kurute*; and low-born is *vala*, the final "la" coming from *alam*.

52. All the commentators take the term *eka* (one) to mean that one should not call a single witness. This is implausible, because the term occurs within a long list of individuals who are disqualified from being witnesses because of some disability. The term *eka* may, within this context, refer to what we would call a "single person," that is, an individual who lives on his own and is not part of a larger household, either his own or of an extended family. Indeed, a single witness is permitted in verse 77, although this is admittedly a proverbial saying.

53. See Vasistha in ch. 9.4: #3.

54. The meaning is that the judge should not look into factors given above that would disqualify a witness in these kinds of cases. Anyone is permitted to testify.

55. Bühler, following the commentator Kulluka, translates: "(depositions) differing from that, which they make improperly, are worthless for (the purposes of) justice." He connects *dharmrtham* syntactically with *aprthakam*. I follow the commentators Medhatithi, Raghavananda, and Ramacandra in connecting *dharmrtham* adverbially with the verb *vibryu*; the meaning being that they tell a lie for a higher purpose. This point is spelled out in verses 103–104, where also we have perjury committed for the sake of dharma (*dharmata*). Such false statements are made, for example, if the life of the defendant is at stake. For a long list of indicators that point to false testimony, see *NSm* 1.175–178.

56. Commentators and translators alike take *deva* in the compound *devabrhmaasnidhye* here to mean images of gods. This may well be the case. But *deva* can also refer to the king (see *MDh* 7.8; 11.83), and we have an exact parallel in *MDh* 8.60: *npabrhmaasanidhau*, where the questioning of the witness is done in the presence of the king and Brahmans.

57. The commentator Nandana explains, correctly I think, that a Vaishya is made to touch these substances before testifying; and this is precisely what is stated in verse 113. Alternatively, the judge may have uttered an imprecation about the man's cows, etc.

58. If the witness has no quarrel with Yama, the god of death and the judge of the dead, then there is no need for him to go on pilgrimate to the Ganges or the Kuru land (*kuruketra*) to expiate his sin.

59. The Kma formulas are found at *T* 2.3. The verse to Varua is *V* 1.24.15, and the three formulas addressed to

water are found at *V* 10.9.1–3.

60. For these fines, see n. 35.

61. The story in this verse probably refers to *V* 7.104.15. Vasistha was accused of being a fiend who had eaten his own sons. He cleared himself by an oath that if it were true he should die that very day.

62. The procedures for various ordeals are described in *NSm* 20 (see ch. 11.2). In the fire ordeal, eight circles are drawn on the ground. Seven pipal leaves are tied to the palms of the person undergoing the ordeal and a hot iron ball is placed in his hands. He must carry it through the circles and drop the ball at the designated place. If his palms are not burned, he is declared innocent. In the water ordeal, an arrow is shot from a medium-sized bow. The person undergoing the ordeal must remain submerged in the water until a fast runner brings back the arrow. The third ordeal listed here is actually an oath; if his family does not suffer any mishap soon (during 14 days, according to commentators), he is innocent.

63. Vatsa was accused by his brother of being the son of a Shudra woman and thus not a pure Brahman. Vatsa went through fire to prove his pedigree. See *Pañcavia Brhmaa* 14.6.6.

11. THE MATURE PHASE

1. For a detailed discussion of the textual history and authorship of Kautilya's treatise, see Olivelle 2013.

2. These fragments have been collected and edited: see Aiyangar 1941 and Kane 1933.

3. The commentator Vijnanesvara observes that "in a similar manner" refers to normative practice (*cra*). See the coupling of the two in the very next verse.

4. The Sanskrit term here, *vyavahrapada,* is ambiguous. It could simply refer to the subject or topic of litigation, such as the eighteen given in *MDh* 8.4–7. But given that Yajnavalkya refers to the four feet of legal procedure (*catupd vyavahra*), I think it more likely that here also he is referring to the four feet of a judicial procedure.

5. Although Yajnavalkya does not identify the four feet, it is clear that he has listed them in the previous verses: plaint, plea, evidence, and proof. In later texts the last is identified as verdict.

6. The term *shasa* can also mean robbery or mugging, when property is taken by force in the presence of the owner. Thus, Manu (8.332) defines "violence" and distinguishes it from theft: "When an act is committed with force and in the presence of the victim, it is 'violence'; when it is committed outside his presence, it is 'theft.'"

7. The medieval commentators Vijnanesvara and Apararka take the term *atyaya* to mean some kind of destruction of life or property. I think the early commentator Visvarupa is correct in thinking that the term refers to an urgent matter, that is, a case that does not permit delay. See *NSm M* 1.39 (ch. 11.2: #1).

8. The meaning appears to be that the plaintiff attempts to settle his doubtful claim (e.g., a claim that the defendant has denied) not by proper means of proof, such as witnesses or documents, but by extrajudicial means such as arresting or threatening the defendant.

9. The issue here relates to who has the burden of proving his case, called by the technical term "prior litigant" (*prvavdin*), according to the explanation of Vijnanesvara. Most commonly this person is the plaintiff. Thus, his witnesses are called to testify first. There are conditions, however, under which the "prior litigant" status falls on the defendant (*uttaravdin*). Vijnanesvara gives this example of a suit concerning a piece of land that the plaintiff claims he received as a gift but is now occupied by the defendant. The defendant admits that the plaintiff received the land as a gift, but it was subsequently purchased by the king and given to the defendant. In this case, the claim of the plaintiff being annulled by the plea of the defendant, the onus of proof falls on the latter and he becomes the "prior litigant"; his witnesses are deposed first (see *YDh* II.23). Another explanation relates to the two kinds of plea: "special plea" (*kraokti* or *pratyavaskanda*) and "prior judgment" (*prnyya*). In the first case, the defendant admits the charges but pleads innocent for a specific reason: e.g., admits that he borrowed the money as stated in the plaint, but says that he returned it. In the second case, the defendant claims that the same charges against him have been already dismissed by the judgment of another court. In each case, the burden of proof falls on the respondent or defendant, and he then becomes the "prior litigant."

10. For the custom of waging a bet or stake at a trial, see Devanna Bhatta's comments in ch. 13.2: #2. For a

detailed discussion of this issue in the legal literature, see Lariviere 1981b.

11. That is, the judge must detect and dismiss all kinds of deceits and tricks that the litigants may use to win the case.

12. For opposing viewpoints on this issue, see Vijnanesvara's commentary on this verse in ch. 13.1: #3.

13. Here the reading of Visvarupa (*smter virodhe*), which I follow, is markedly different from that of Vijnanesvara and Apararka, who read *smtyor virodhe* ("when there is a conflict between two texts of recollection"). Here the term *nyya* appears to be a synonym of *sana* (royal edict), as in the *A* 3.1.45.

14. Enjoyment (*bhukti*) is a technical term referring to legal possession and usufraction of the thing under litigation. If someone, for example, has tilled a particular field or milked a particular cow for a stipulated period of time, then the presumption is that he has ownership of it: *YDh* 2.24. See, however, *YDh* 2.27, where title to a property is given greater force than possession.

15. I follow here the reading of Visvarupa and Apararka: *sarvev eva vivdeu*. Vijnavesvara reads *sarvev arthavivdeu.* Note that property crimes (*arthavivda*) are often distinguished from those involving injury caused by anger (*manyukta*). See Vijnanesvara on *YDh* 2.9 in ch. 13.1: #2.

16. For an explanation of the reasons for this, see Vijnanesvara's commentary on this verse in ch. 13.1: #4.

17. The term *dhana* literally means money, but here, as Vijnanesvara points out (ch. 13.1:#4), it refers to movable property, such as horses and cows. The same term with this meaning occurs also in verses 25 and 26.

18. That is, the entire list beginning with "pledge," given in the previous verse.

19. As I have already noted, the Sanskrit term *vyavahra* refers both to a legal transaction (such as taking out a loan) and to a lawsuit. These two verses are dependent on the parallel in the *A* given in ch. 10.1: #1, where the reference is clearly to legal transactions. Yajnavalkya uses the term within his discussion of lawsuits, but some of the disabilities referred to here apply instead to transactions. So, both meanings appear to be functioning here in a rather confused manner.

20. Probably outside the village or town. Valid transactions have to be both voluntary and out in the open in the presence of witnesses; hence the exclusion of those carried out inside a house or outside a village. See the parallel in the *A* given in ch. 10.1: #1.

21. This topic is introduced here because the litigants in a lawsuit are expected to provide sureties capable of satisfying the verdict: *YDh* 2.10 (selection #1).

22. A surety for appearance is obliged to present the defendant in court at the day of the trial. A surety for trustworthiness simply vouches for the good character of the person. The third type of surety undertakes the obligation to pay either a debt incurred or the amount needed to satisfy the judgment of the court.

23. There are two ways several sureties could guarantee a loan. Each could guarantee a portion of the loan, or all could guarantee the entire loan individually. In the first case, each is liable only for that part of the loan guaranteed by him. In the second case, each is liable for the entire loan, and the creditor could press any one of them to pay all of it.

24. *SmC* II: 453 glosses *nirdhta* with *avadhta*, a particular kind of ascetic, which I think is the correct interpretation. People who have been excluded from their families, which is Vijnanesvara's explanation, are comprehended under *patita* or outcaste.

25. The meaning of the unusual expression *sabrahmacrika* is unclear. Both Vijnanesvara and Apararka take it to mean the Vedic branch to which the person belongs.

26. The phrase *tesam* at the end of the verse is unclear with regard to both its reading and its meaning. Vijnanesvara assumes a reading without an *avagraha: te sam,* and thinks it posits an even number of witnesses, possibly evenly divided between the two parties. Visvarupa, whom I follow, takes the reading to be *te 'sam* (with "a" elided by Sandhi), requiring an uneven number of witnesses. Apararka and others give both readings. See *DhKo* I: 352.

27. That is, by the debtor and, if he is dead, by his sons and grandsons.

28. That is, so long as the underlying debt is not paid, the pledge that was the collateral for the loan can be made

use of by the creditor and his descendants even beyond the third generation.

29. According to Vijnanesvara, “marks” refers to unique symbols that may be on the document. “Connection” refers to the previous dealings that the creditor and debtor may have had.

30. The meaning is that the amount under litigation should be more than 1,000 Paas for these kinds of ordeals to be used.

31. This is a variety of fire ordeal. An iron plowshare is heated and, after a ritual invocation, it is licked by the person undergoing the ordeal. If his tongue is not burned, he is judged to be innocent. See Lariviere 1981a: 215–16.

32. This is a very pithy aphorism. It is clear that the balance is used for Brahmans and others who are considered weak. The reading of pda-c is unclear because of Sandhi: *agnir jala vdrasya*, which can be either *v drasya* (so Vijanesvara) or *v+adrasya*—the latter is the reading of Visvarupa, which I follow. Traditionally they are viewed as meant for Kshatriyas and Vaishyas, respectively. Although left unstated, the last ordeal of poison is meant for Shudras.

33. This would be the place where the middle marker of the balance is when the two sides have equal weights.

34. That is, if there is a doubt whether he was burned or not.

35. This is an extremely pithy and syntactically muddled verse. According to Vijnanesvara, this is what happens. Three arrows are shot from the location where the man seeking exoneration is going to submerge himself in water. One quick runner runs to the place where the middle arrow (neither the longest nor the shortest) fell. Then at the third clap of the hand the man submerges himself in water, and another swift runner located at the middle arrow runs with the arrow to the original location. When he arrives there, if he does not see any part of the submerged man’s body, then he is judged innocent. For this and other ordeals, see Lariviere 1981a.

36. For various kinds of poisons, see *A* 2.17.12.

37. Raghunandana Bhattacarya’s *Divyatattva* (Lariviere 1981a: 264) gives seven such symptoms according to the science of poison: 1. horripilation; 2. sweating and dryness of the mouth; 3. change of color; 4. trembling of body; 5. lack of eye control, sore throat, and hiccups; 6. heavy breathing and delusion; and 7. death.

38. According to Visvarupa, the instruction is given by the official administering the ordeal to the man undergoing it. The official tells him that he should not consider this as ordinary water but as divine water that will inflict punishment during future lifetimes if he tells an untruth. Vijnanesvara thinks that the reference is to a ritual formula addressed to the holy water and gives the following: “O Water, you are the life of living beings” (see Divyatattva 284in Lariviere 1981a). Apararka gives the simple formula: “By truth protect me, O Varuna.”

39. See Lariviere 1989, II: xix–xxii.

40. Cited in Lingat 1973: 102.

41. See Lariviere 1989, II: xxi; Lingat 1973: 102.

42. The term *vyavahra* can mean both lawsuit and legal procedure. I think the use of *dra* in verse 2 (we see the use of the verbal forms of this term with the meaning of trying lawsuits: see *MDh* 8.1–2; *YDh* 2.1) makes it likely that we are dealing here with lawsuits, even though the meaning of legal procedure, which is the main topic of this chapter, is always lurking in the background. The meaning of the term shifts to legal procedure in verse 6.

43. The expression *sottara* is an abbreviated compound standing for *sottarapaa* (used in verse 5), which is the same as *sapaa*, used in the *YDh* 2.18. See n.10 above.

44. The term *pada* here has two meanings, referring literally to feet within the image of humans and animals, and in an extended meaning to the *vyavahrapadas,* the titles of law or subjects of litigation.

45. For a detailed study of these four feet and their literary and social history, see Olivelle and McClish 2015. Later authors interpret “four feet of legal procedure” to mean “four feet of a verdict.” The meaning then is that these are the four ways a judge would reach a decision.

46. This assumes that the customs of various regions and collectivities are written down in records kept at the royal chancery. See this practice in *A* 2.7.2 (ch. 3: #1). These two verses of Narada are based on *A* 3.1.39–40, given in ch. 10.1: #4. For an analysis of this expression, see Rocher 1979.

47. The four expedients (*upya*) of political science are: conciliation, gifts, dissension, and military force (*sma*,

dna, bheda, daa): see *A* 2.10.47–56. These are somewhat out of place in a lawsuit, but see p. 313 for its application within the context of a lawsuit.

48. For how these four are affected by an unjust verdict, see *MDh* 8.18 in ch. 10.1: #2.

49. The reference is probably to a treatise on dharma. It is known from a variety of sources that an actual treatise was, at least sometimes, kept within the court, perhaps as an outward sign that the court is conducting its procedures in accordance with the principles laid down in it. See *NSm M* 1.29, given below.

50. The term *kriy* here may also have the technical meaning of a plaint in a lawsuit. In the *SmC* (III: 88), Devanna Bhatta equates *kriy* with *sdhya,* the charge that has to be proved. There I have translated this verse of Narada to reflect his understanding.

51. The *Muaka Upaniad* (1.2.4) identifies the seven tongues: "The Black, the Terrible, the Swift-as-the-Mind, the Blood-Red, the Smoke-Colored, the Sparkling, and the glittering Goddess—these are the seven flickering tongues of flame." See also *V* 1.146.1.

52. This is Yama, the god of death and the judge of people who die. He is impartial to everyone, looking only at the good and evil deeds they have performed on earth. This is spelled out in *MDh* 7.307: "As Yama, when the time has come, holds friend and foe alike in his grip, so the king should hold his subjects in his grip; for that is the Yama vow."

53. The exact meaning of the term *gama* here is unclear. I think it has a literal meaning of "arriving," that is, the initial filing of charges in a lawsuit. This is the interpretation of Devanna Bhatta, who takes it to mean "hearing the words of the plaintiff" (*arthivacaravaam*; *DhKo* I: 90).

54. For the story of Mandavya, see ch. 10, n. 38.

55. For a longer discussion of the conditions under which a transaction becomes legal, see ch. 10.1.

56. See *YDh* 2.12 and n. 7 above.

57. In the case of a person escaping detention, the term *vineya* (to be disciplined) is used, while in the case of a person wrongfully detaining someone, the term *daabhg* (subject to punishment) is used. The distinction between the two terms, which often can have the same meaning, is unclear. Most commentators (see *DhKo* I: 118) take them to be synonyms, while Lariviere in his translation renders the former as "should be subpoenaed," which is doubtful. See, however, the use of *vinaya* in verses 50 and 224 and *vineya* in 52 with the meaning of fine.

58. The legal age for males is sixteen and for females twelve. See ch. 10.1, n. 16.

59. The image is of an animal shot by a hunter with an arrow. This act creates an ownership of the wounded animal by the first hunter. A second hunter is not allowed to shoot the animal again. See the sexual metaphor of deflowering a virgin at *MDh* 9.43. Here, however, there may also be a moral argument against shooting someone who is already wounded.

60. The term *vedita* used here has a technical meaning referring to the initial filing of charges: see *YDh* 2.6. It is at this time that the plaintiff has to inform the court about the evidence he will use to substantiate his case.

61. Here we have two technical terms: *trita* and *anuia*. The first appears to mean a lawsuit that has been adjudicated, while the second is where a final verdict has been rendered by the judge. Some think that the first is one where a verdict has been rendered, while the second is where fines and punishments have been imposed. See *MDh* 9.233; Kane III: 383.

62. Here the author is playing with the double meaning of *sabhya*: both refined/cultured and an assessor or court official. By telling a lie in court, he becomes unrefined and a false assessor.

63. The three kinds of proof are given above at *NSm* 1.65: document, witnesses, and enjoyment. The meaning here is that possession of an object, especially land, is needed to establish ownership, even when a title or witnesses are available—as stated in the very next verse.

64. For this and the following verses, see *MDh* 8.147–49.

65. I have read the text as *str dhana ca narendrm.* Others read *strdhanam* as a compound; Lariviere translates: "The property of women and kings." So far in the *NSm* only women (probably slaves) have been dealt with, not the property of women.

66. The verse is elliptic. I think the commentators (see *DhKo* I: 409) are correct in assuming that here also, enjoyment presented as evidence of ownership is not authoritative unless the person can show the title to the property.

67. I follow Devanna Bhatta in seeing the initial "Likewise" (*tath*) as connecting this verse to the rule "When the very man" (see *DhKo* I: 410). The meaning is that, once a case has been brought against the man who first started using some property, when he dies while the court proceedings are in progress, then his son cannot claim possession as proof of ownership. This is an exception to the rule "Enjoyment alone is successful" and what is stated in the very next verse.

68. The exact meaning of this verse, especially of the last phrase, is not completely clear. Mine differs from Lariviere's translation; I follow the reasonable explanation given by Vijnanesvara in his comments on *YDh* 2.89.

69. See above, *YDh* 2.92 and ch. 11, n. 29.

70. The terms "appointed" (*kta*) and "non appointed" (*akta*) refer to witnesses who are identified as part of the evidence that the litigants will present to court, and ones who are not so identified but may yet provide important information on a disputed matter. These are also called *nirdia* and *anirdia*.

71. This witness has been summoned specifically by the parties to a transaction and told repeatedly to remember what he has witnessed. A definition is given in *KtSm* 372: "When someone has witnessed the transaction and, in order to provide proof of that transaction, has been reminded of it repeatedly by the litigant, he is called a witness who is made to remember."

72. An indirect witness is someone who has heard the testimony of a direct witness, but has not directly seen or heard the transaction himself.

73. Lariviere thinks that that man cannot be a witness with regard to those groups. I follow the clear explanation of the *SmC* (I: 177) that the members of the group who bear hatred toward that man are excluded from being witnesses.

74. The term *vadhaka* here may refer to butchers and those who slaughter animals. That is the meaning of *vadhakt* at *NSm* 1.67.

75. The *Sarsvatvilsa* (p. 141; *DhKo* I: 303) clarifies that this does not refer to simple disagreements among witnesses, which are only to be expected. When, however, a group of witnesses assert at the beginning that they are unanimous on a particular point, but later during the trial if even one of them disagrees with that assertion, then the entire group becomes disqualified.

76. With regard to the entire issue of the person who has the burden of proof, see Devanna Bhatta in ch. 13.2: #7.

77. This is one of the five types of appointed witnesses given above: *NSm* 1.130; n. 71 above.

78. Lariviere takes *lubdhaka* as a greedy man. The reading here is confused; many citations of this verse have the reading *vyagaika* -(*DhKo* I: 306), explained as a person lacking a limb, and a single person.

79. The term *vrtya* here probably refers to people who have not undergone Vedic initiation at the proper time and are considered fallen from Brahmanical ritual practice.

80. For the meaning of the term *kna*, see *MDh* 9.150 and Medhatithi's commentary on it.

81. The reference may be to people who engage in sorcery associated with roots called *mlakarma* in *MDh* 9.290 and 11.64; see ch. 8, n. 39.

82. That is, physical and verbal assault.

83. The term *artha* here has been taken in a broad sense to refer to things or matters in general. Given the context of court proceedings, however, I think the term here may have the technical meaning of a court case or lawsuit.

84. For this story of Vasistha, see ch. 10, n. 61.

85. For this story, see *MBh* 13.94–96.

12. EARLY COMMENTATORS

1. The words in the smaller font, here and in the section on Medhatithi, are not found in the verse but are implied

and taken over from the previous verse. The commentaries on this verse would point this out.

2. See the previous note.

3. It is understood that it is to the court that he goes every day.

4. This sentence is probably corrupt. The *DhKo* I: 71 gives a conjectural reading, which I have not followed because it departs radically from the readings based on manuscripts.

5. Here also the *DhKo* I: 71 presents a very different reading.

6. Following the *DhKo* (I: 71), I have corrected the reading here from *anudita* to *andita*. See the similar use of this term in the commentary on *MDh* 2.6 (Jha, p. 56, second line from the bottom).

7. This is a very difficult sentence, possibly corrupt. The *DhKo* (I: 72) attempts to emend it as follows: *atra kalpitavyavasth yath—lekhya, yathopabhoga, skia | anumna tu vastuniyatam*. I think this passage has been corrupted. For lack of a better alternative, I have followed the text as emended by the *DhKo.* The meaning, however, appears to be that the kinds of evidence to be presented in court, such as documents, possession for a period of time, and witnesses, that are given in legal texts are really worldly norms (*vyavasth*) and not Vedic dharma.

8. This is quite a difficult passage, and the reading is also uncertain. I follow the reading and punctuation provided in the *DhKo* (I: 72): *yady api sarva laukika na strakravacant prama bhavati | tathpi laukikam eva, tasmin kvacic chstram rayitavyam |*

9. This verse comes at the end of Yajnavalkya's description of the process of executing a legal document and states that this statement by the scribe should be written down at the very end, immediately after the signatures of the witnesses. Medhatithi, however, thinks that this sequence is not required for the validity of the document. He is a realist and does not think that the letter of the law is that important for arriving at the correct verdict in a case. Both Jha and Gharpure read *lekhakas tattvato likhet,* while *DhKo* (I: 71) has emended to this read *tv antato likhet,* following the reading of Vijnanesvara.

10. The editions of both Jha and Gharpure read here *anupalakito 'pi*. The *DhKo* (I: 72) gives the reading as *anupalakae 'pi*. I think the correct reading should be *anupalakite 'pi*.

11. For the meaning of this phrase, see ch. 11, n. 26. The differences in the reading noted there do not affect the argument presented by Medhatithi.

12. The meaning of *ta eva lekhyam* is not altogether clear. The opponent's argument seems to be that once a document has been witnessed, the witnesses become part of the legal framework of that document. So the document can be viewed as superior to mere live witnesses, who must relie on their memory.

13. Jha and Mandlik give the reading *skidvaidhnnyya*. I follow the reasonable emendation of the *DhKo* (I: 72): *skidvaidhanyya*.

14. The reading of Jha and Mandlik is *nirupdhi*, but I think the emendation *nirupadhi* given in the *DhKo* (I: 72) is superior. Or it could be *nirupadha*, which is derived from *upadh*, a common term for fraud and deceit (see *A* 2.5.9; 2.14.10).

15. The editions of Jha and Gharpure read: *nsty eva pramntarasya skyder avasara*. This is clearly erroneous, because the intent is to allow for witnesses within these narrow circumstances. I have followed the emendation of the *DhKo* (I: 72): *ctrsty eva pramntarasya skyder avasara*.

16. The plaintiff here is the man taking the loan. After he has executed the loan document, the creditor asks him to take only a portion on that day. He promises to give the rest of the loan on the following day, but he reneges on it. So, the creditor is holding a document for the entire amount of the loan, whereas he has given the debtor only a portion of it.

17. The text reads: *vinpi skibhi sidhyet svahastaparicihnitam*. This appears to be a variant reading of *YDh* 2.89, where the reading of the editions is: *vinpi skibhir lekhya svahastalikhita tu yat*. The reading at *YDh* 2.93, pda-d, however, is: *svahastaparicihnitam*.

18. Here I follow the reading of *DhKo* (I: 73): *yadi hi tena na dhana dattam*. The word *na* is omitted in Jha and Gharpure, perhaps through haplography.

19. I have been unable to trace the source of this citation.

20. Here I think after *svahastalekhyam* a phrase such as *sidhyati* is understood. The *DhKo* (I: 73), however, has the reading *svahastalekhye*.

21. The text in all the editions reads: *prty tvayaitad uktam* (This was stated by you out of affection). I am unable to make sense of this, because the debtor is trying to wiggle out of the contract. I have emended it slightly, because the orthography of *e* and *ai* are often confused: *prty tvayy etad uktam*.

22. Bhartryajna appears to have been a prolific commentator. He is cited not only by Medhatithi but also by other later authors as an authoritative writer. Kane places him in the eighth century C.E. For further details, see Kane I: 551–53.

23. The readings of the editions differ widely here. I follow the judicious reading offered by the *DhKo* (I: 73): *vykhynntari bhartyajñenaiva samyakktnti tata evgavantavyni sarvath pramamlni | smtikraavyavasthnuvartitavyeti* |. Jha (p. 76) gives a confused reading: -*gantavyni* | *sarvath pramamlni smtikraam* | *vyavasth tu kartavyeti* |.

24. The Sanskrit *hartak* refers to *Terminalia chebula*, the fruits of which are used as a laxative.

25. Medhatithi deals with the injunctions relating to the purification of articles made of metal, stone, wood, and the like in his commentary on *MDh* 5.110. What he wants to assert there is that even though these rules have injunctive verbs, such as the optative, they are not true injunction in the Vedic sense. They merely state the common practice in the external form of an injunction: “You should clean metal utensils using ash, earth, and water.” But such practices can be learned by observation, and the injunction simply reiterates the common practice. Thus, in the example given here, eating the myrobalan as a laxative is a common practice and recommended by medical practitioners. It is not something that has an unperceived purpose, which is required of all truly Vedic injunctions.

26. Success is *artha* and pleasure is *kma*, two members of the triple set that includes dharma. Of the three, only dharma has a claim to be eternal.

27. The reading here is unclear and probably corrupt. I have followed the reading of the *DhKo* (I: 76): *aya rjopnayanrtho daa patati devatotsavrtho v*. Jha reads: *rjño ’padeenrtho*, and Mandlik: *rjñopadeenrtho*.

28. On the technical meaning of *sapradna* as the recipient expressed in the dative of an act of giving (e.g., *updhyyya g dadti*), see Panini 1.4.32.

13. MEDIEVAL COMMENTATORS AND SYSTEMATIZERS

1. The term *hetu* here has a technical meaning. Rocher (1956) calls it *probans*, that is, the reason why the plaint is justified. Thus, if the plaint (*probandum*, or what has to be proven)says that the defendant owes the plaintiff 100 rupees, then the *hetu* is his claim that the defendant borrowed 100 rupees from him: “He owes me 100 rupees, *because* he borrowed it from me.”

2. These verses are ascribed to the *KtSm* 86–88, 97–98. See *DhKo* I: 125–26 for these verses.

3. For the meanings of *vineya* and *daabhg* here, see ch. 11, n. 57.

4. The expression *kamligni* has a technical meaning: the reasons the plaintiff permitted the defendant to keep and make use of his property without objection. This becomes relevant in cases where an article has been enjoyed by a defendant for a long time, creating a presumption of ownership. See Devanna Bhatta’s comments on *KtSm* 124–26 at ch. 13.2: #5.

5. See ch. 13.2: #5 where Devanna Bhatta ascribes this citation to the *Smtisagraha*.

6. A *nivartana* is about 58 sq. meters.

7. These are the letters of the Sanskrit alphabet going from the guttural to the labial, with hard consonants first and then soft consonants.

8. This verse is not found in the edition of the *NSm*; see *DhKo* I: 141.

9. See *DhKo* I: 162 for this verse, variously ascribed to Narada, Brihaspati, Pitamaha, etc. See *SmC* III: 96 (ch. 13.2: #6).

10. See the following note for some examples of such difficult or ambiguous language. The compounds mentioned here probably refers to Tatpurua compounds, where one has to guess the grammatical case of the first

member in order to specify its syntactical connection to the following word. Different cases will provide different meanings, something that cannot be permitted in a legal document.

11. The example given here uses broken Sanskrit syntax and impossible compounds. I have omitted it, because it is impossible to show this in a translation. The example given by Vijnanesvara pertains to a debt of one hundred Suvara gold coins inherited by a person from his father (*suvaraataviaye pitbhiyoge*). The plea reads: *ghtaatavacant suvarn pitur na jnamti*. The only way a meaning can be derived from this is to rearrange the sentence with a proper syntax: *ghtaatasya pitur vacant suvarn ata ghtam iti na jnmi*— "Because of the word of the father who took a hundred, I do not know whether (or do not acknowledge that) one hundred Suvaras were taken." Here there is an ellipsis of *ata ghtam* relating to *suvarnm*, and the compound *ghtaatavacant* is impossible to dissolve.

12. Ascribed to Harita in *DhKo* I: 233.

13. This is one portion of a longer passage of two verses ascribed to Harita (*DhKo* I: 185). The entire passage reads: "When both a denial and a special plea are entered in a single case, or an admission coupled with another plea, what is the plea that should be taken up? Between a denial and a special plea, one should take up the special plea."

14. That is, the defendant may choose to present evidence either first for the special plea (e.g., witnesses or a document proving that he returned the money) and then for the prior judgment (e.g., the court document), or vice versa.

15. The two feet in a case where there is a plea of admission are plaint and plea.

16. The term *hnavdin* (or simply *hna*) generally refers to the litigant who has lost the case (see *NSm M* 2.33, cited by Vijnanesvara on *YDh* 2.6). But here he appears to take the term as referring to a litigant who is guilty of an infraction pertaining to legal procedure. Later Vijnanesvara says that such a litigant is only to be fined; he does not lose the case.

17. The crime of not returning the money is tried under the first subject of litigation, the nonpayment of debts. The crime for robbery is tried under forcible seizure (*shasa*).

18. Editions of the *Mit* read *parastr* ("another's wife") but *paustr* (farm animals and women, as a Dvandva compound) is the better reading (as noted by Gharpure), and it is also the reading in Lariviere's critical edition of the *NSm*.

19. The logical reasoning is what was noted earlier. A man who lies with respect to one part of the allegation can be assumed to have lied about other parts as well. But the son here has not lied; he simply stated the fact that he does not know anything about his father's debts.

20. The reference here is probably to *YDh* 2.20 that deals specifically with a plea of denial.

21. The meaning of the Sanskrit *sthirapryeu* is not altogether certain. Kane translates: "which are of a permanent character." I follow the subcommentary *Blabha*, which says that disputes relating to debts have clear evidence in the form of documents and witnesses, while other disputes, such as adultery, would have to be decided through circumstantial evidence.

22. This maxim, *ekadeavibhvitanyya*, is supported in *YDh* 2.20. This appears to be a variant of the maxim *ekadeaviktinyya* (see Jacob 1904: 16), which refers to the fact that a change in one part does not change the whole; or, in the present context, when one part of an animal is identified the whole animal is identified.

23. The reference is to cases involving transactions executed in the wilderness, etc., and to cases involving violence and denial of a deposit.

24. Note here that the edition has *ca* ("and"); I have taken it to be *v* ("or"), following other citations of this verse (see *DhKo* I: 231) and the subcommentary *Blambha*, which says that this provides an option (*vikalpa*).

25. Here we have quite a complicated compound: *dvramrgakriybhogajalavhdiu*. Here my interpretation of *kriy* and *bhoga* is based on the subcommentaries *Subodhin* and *Blambha*.

26. I am not quite sure of the meaning of this half verse; it is not recorded in the *DhKo*, and Gharpure's translation is wrong. It is not directly commented on by either Sulapani or Balambatta.

27. The argument is a bit complex. First, the relationship of enjoyment or possession to ownership is defined as *prama*, means of knowing something, in this case inference. So, when we see a man occupying a house, we infer that

he owns the house, just as we infer the presence of fire on a mountain when we see smoke rising from it. But a means of knowledge does not produce what it reveals: enjoyment does not produce ownership, just as the smoke does not produce the fire. So, mere enjoyment cannot produce ownership. The causes of ownership are listed in texts such as Gautama's cited by the opponent, but enjoyment is not one of them.

28. Gautama's commentator, Haradatta, explains that here possession (*parigraha*) refers to a situation when someone takes fruits or grass that do not belong to anyone. The one who takes these first becomes their owner.

29. A restrictive rule (*niyama*) in Vedic exegesis is meant to restrict all possible or available options to a selected few. Thus, the opponent argues that Gautama's statement is not an originative rule (*utpatti*) that would prescribe these as the causes of ownership. Rather, the various causes already known in the world are reduced to just eight by Gautama.

30. See ch. 3, n. 9.

31. The meaning appears to be that the enjoyment of a property for a specific period of time does not, ipso facto, create the loss of ownership in that property on the part of the owner and the ownership in that property by the person enjoying it. Such a transfer of ownership can be done only as a result of the judicial verdict after a legal proceeding.

32. At *NSm* 1.70 the time limit is set at ten years.

33. The meaning of the term *sabhya* in this context is unclear. The *Blambha* glosses it with *nirduo 'rtha*, a meaning that is not flawed.

34. The term for product, *phala*, has two meanings here: produce, like rice or mangoes, and long-lasting trees that may grow on the land. The former are destroyed when they are used or consumed, but the latter last in their original form even when their fruits are being enjoyed. One gets to own the latter even after twenty years, when one gets back the land.

35. We have noted already the multiple meanings of the term *vyavahra*, which can mean both lawsuit and legal procedure. In Sanskrit both meanings are often present in its usage. I have been inconsistent in this chapter, using "lawsuit" when that meaning is primary, and "legal procedure" when the reference is to the court procedure rather than the lawsuit as such.

36. This verse of Katyayana has been subject to various interpretations: see Kane's (1933) note to his translation of this verse. A central issue is the meaning of *nyyavistare*. I have followed Devanna Bhatta's interpretation, which takes *nyya* in its technical meaning relating to legal reasoning.

37. Devanna Bhatta equates *kriy* with *sdhya*, the charge that has to be proved. I have translated this verse of Narada to reflect his understanding.

38. For a detailed study of these four feet and their literary and social history, see Olivelle and McClish 2015.

39. The reference is probably to the court officials or to Brahmans who are present in court as advisors.

40. One can infer that a man is an arsonist when he is found near a fire with a firebrand in his hand. See *NSm* 1.155 in ch. 11.2: #2.

41. This is an interesting anecdote. In Kautilya's *Arthastra* (2.7.2; ch. 3: #1), it is explicitly stated that the king should have written records of the customs in various regions and communities of his kingdom.

42. This verse is ascribed to Pitamaha at *SmC* III: 58; see *DhKo* I: 105.

43. The author here picks up the argument that was interrupted by the objection after the citation of *NSm M* 1.10 (page 272).

44. See these four divisions at page 272, *NSm M* 1.8–9.

45. See ch. 11, n. 47.

46. For this rule, see *MDh* 8.18 in ch. 10.2: #2.

47. The meaning is that not all three are needed to have a dispute, just one would suffice.

48. This is both a substantive definition of a lawsuit or legal procedure (*vyavahra*) and an explanation based on phonetic similarity. It is said to be *vyavahra* because the legal disposition (*vyavasthna*) is based on statements (*vkya*)
.

49. Here Srinivasacharya’s edition is incorrect: *prambhvaakhpanodakam*. Gharpure’s edition has the correct reading: *prambhsaakhpanodakam*.

50. The term used here for judge is *prvivka*: see ch. 10, n. 47 for a comment on this term.

51. Here we have a phonetic etymology and explanation of the term *prvivka*. The first derivation is from asking (*pcchati*) questions (*prana*) and counterquestions (*pratiprana*). The second is from speaking (*vadati*) at the outset (*prg*) and affectionately (*priyaprvam*).

52. Here Devanna Bhatta gives a bit more plausible etymology of *prvivka*, derived from two sources: *pr* from the fact that he questions (*pcchati*), and *vivka* because he is especially (*vieea*) charged with rendering a verdict.

53. In the long section omitted here, there is a discussion of trials adjudicated personally by the king or by a Brahman judge (*prvivka*) representing him. These are the higher venues for trials.

54. The reference is to disputes involving two villages. The adjudicators for such disputes are drawn from both villages.

55. There are various lists of low-caste and untouchable people, and many of them are headed by the washerman (*rajaka*): See Apa I: 279; Kane IV: 115. The most pertinent list is given by Devanna at *SmC* III: 65, where he lists eighteen “low” castes called by the technical term *prakti*. A passage ascribed to the *Garua Pura* in Hemadri’s *Caturvargacintmai* (IV: 38) gives a list of sixteen, headed by washerman, calling them Candalas who live in the village. In Maharashtra today there are lists of eighteen low-caste people, and this may have been true in other parts of southern India where Devanna Bhatta lived (personal communication by Ashok Aklujkar). A closer parallel is found in the Tamil country, where also there are eighteen such castes, again beginning with the washerman, listed in the Madras Tamil Lexicon: *va* [washerman], *nvita* [barber], *kuyava* [potter], *ta* [goldsmith], *ka* [brazier], *kaacca* [mason], *kolla* [blacksmith], *tacca* [carpenter], *eeyvika* [oil merchant], *uppuvika* [salt merchant], *ilaivika* [betel merchant], *pai* [watchman], *pmlaikkra* [garland maker], *paaiya* [drummer; Dalit, pariah], *kvikuiy* [conch blower], *cca* [priest at a goddess temple; another Dalit community], *valaiya* [fisherman], *pa* [tailor]. I thank Whitney Cox for this reference.

56. In the *A* (1.2.1) the four sciences (*vidy*) are listed as: critical thinking, triple Veda, economics, and government (*nvkik tray vrtt daanti ceti vidy*).

57. The reading of the editions is corrupt. I have emended the text to read: *straprayukty npatiprayukty v sabhsiddhyabhvt*.

58. The editions read *sasdhana*, but the text of the *KtSm* reads *sahsana*, which is also the reading in the *DhKo* I: 133.

59. Apararka (p. 605) explains: *vmahastena kicic clayan*, referring to shaking something with his left hand, or perhaps gesticulating.

60. The term *uttaravditva* used here appears to be contrasted with *prativditva*, the latter clearly referring to the defendant. Unless they are used here as synonyms, the former appears to refer to the role of entering the plea, which is the topic under discussion.

61. For this term, see *Amarakoa* 4.78 p. 67; this appears to be a local word.

62. The expression *asabhyavdeu* is uncommon; there are numerous alternate readingsgiven in citations of this verse. According to the explanation contained in the next two verses, these litigations concern especially heinous acts (later *gurukrya* is used) requiring the immediate attention of the court. The expression may also mean a suit that is not acceptable to the court. See the use of *sabhya* with the meaning of something that the court accepts in Devanna’s citation of *MDh* 8.164 at p. 300, and n. 82.

63. The editions and the *DhKo* (I: 133) read *vdin* (or *vdin*) *tath*. The syntax becomes difficult with this reading, and Gharpure understands it to mean that it is the plaintiff who should place the defendant in front of the court, which is unlikely; in the preceding prose, both of them are so placed by the judge. I have emended the reading to *vdin saha*.

64. Order and decree refer to oral and written commands of the king. Document (*lekhya*)refers to a private written contract. Record (*paaka*) probably refers to a title written on a tablet or cloth. Document (*patra*) refers to any

legal record.

65. The meaning of “god-year” or year of god (*devavara*) is unclear. If *deva* in this context means king, then it could refer to the regnal year.

66. Daa is a measurement of length, approximately 1.92 m. Tul is a measurement of weight, approximately 37.76 kg. Prastha is a measurement of volume, approximately 0.31liters.

67. The reading here is probably corrupt. Srinivasacharya’s edition reads: *pratibhuv dhanikena kt*; Gharpure’s reads: *pratibhuvi y dhanikena kt*, also followed by the *DhKo* I: 151. I have followed the latter reading.

68. See *DhKo* I: 144–47; Rocher (1956) *VyaC*, #89. I have emended the text to read *mukto* for *yukto*.

69. These two statements are inconsistent, the first with regard to place (betel nuts do not grow in the middle region of northern India) and the second with regard to time (mangoes are not in season during the autumn).

70. It is a general principle of Indian law that the accumulated interest cannot become more than the principal owed; thus principal plus interest can never become double the principal borrowed. In gifts and the like, as we have seen, proof of an earlier transaction is stronger than that of a later one.

71. The meaning of *sanivea* in this context is unclear. Kane (1933) thinks that the reference is to boundaries of the land.

72. 1,000 Palas = about 38 kg. One would never have a pan that is so heavy.

73. The meaning is that both the plaint of the plaintiff and the plea of the defendant have been written down by the plaintiff himself.

74. I follow the edition of Srinivascharya in reading *attaklo dviha ca*; Gharpure and the *DhKo* (I: 143) read *attakloddia ca*. Clearly, the former is the *lectio difficilior*, and it also agrees with the explanation given in the following verses.

75. The term *pada* here may also be a reference to the *vyavahrapada*s, the subjects of litigation, as indicated by the statement of Katyayana given below.

76. The exact meaning of the term *tyakta* is unclear. It could well refer to grants or donations made by the king (here a tax exemption or a donation of a building), which cannot be subjected to litigation.

77. The meaning of the term *prcna* here is unclear. It can mean “ancient,” which is how Gharpure translates it. If that is the case, Devanna Bhatta is exhibiting an interesting historical viewpoint, also evident in his comments above (p. 281) on *KtSm* 682, where he says that Brihaspati is a more ancient author than Katyayana.

78. This is also a citation from Katyayana, even though neither Kane (1933) nor Aiyangar (1941) includes it in their edition. See *DhKo* I: 155.

79. See the eight modes of acquiring ownership given in *GDh* 10.39–42 (above Vijnanesvara on *YDh* 2.24).

80. The draft of the plaint was written on a surface where corrections could be easily made. The earliest method appears to have been the ground or floor spread with sand. This is the method given in the court scene of the drama *Mcchakaika* (act 9).

81. Devanna Bhatta here makes a distinction between *lokasiddha* given in the citation and the parallel expression *lokaprasiddha*; the two often have the same meaning.

82. The reading of this verse here is somewhat different from that of the edition of the *MDh*. Here we have *sabhy na* (not acceptable to the court) instead of the original *saty* (untrue, invalid). Further in the original, *bh* probably referred to an agreement rather than a plaint, a meaning that term acquired at a later date.

83. The maxim of the time at which a conch is blown is explained by Sabara in his comments on *PMS* 6.4.42. When there is a rule that something should be done in a village at the sound of the conch, even if it is not blown on a particular day, the activity must be carried out. The meaning here is that even though the plea has not been entered, the time for emending the plaint ends when the prescribed time for entering a plea has passed. See Jacob 1904: 84.

84. I have followed the reading of Gharpure and *DhKo* I: 158: *samyakskteu kryibhi*, in preference to the reading offered by Srinivascharya: *samyakstraakribhi*.

85. The term for “plea” is *uttara*, which has the additional meaning of what comes after or what follows. In this

case, the plaint is followed by the plea; so the plaintiff can still emend his plaint while the plea is being stated. What follows the plea is the presentation of evidence (*kriy*), which, then, is technically *uttara*; and the defendant can emend his plea while the evidence is being presented.

86. The expression *rutrthasya* in the text of Yajnavalkya is a bit ambiguous, because of the multiple meanings of the term *artha*. One of the meanings is lawsuit, which I have used in my translation of this verse in ch. 11. Devanna Bhatta apparently takes it to mean a point or a subject at issue, and thus takes the compound to be abbreviated and gives an expanded explanation.

87. The expression *ajñtrthe ca vastuni* is not altogether clear. Kane (1933) translates: "if the whereabouts of the subject-matter (of the dispute) are not known," and Gharpure, "where the particulars of the thing are not known." The meaning, I think, is that the exact location or identity of the subject under dispute is unknown or uncertain.

88. Here I emend the reading of the editions: *krym* to *kryim*; see the previous commentary on *KtSm* 147 where, in the same context, Srinivasacharya's edition reads *kryim*. Gharpure has misunderstood this section.

89. I think Kane is correct in interpreting *mla* in the verse to refer to the original owner or seller of the property. See *BSm* 1.12.6 and *MDh* 8.202.

90. Here the term "thousand" probably refers to the number or quantity, with regard to items under dispute that are subject to counting: ten cows, a hundred coins, and the like.

91. Here we deal with the ambiguities of Indian manuscript writing systems, which do not leave a space after each word, and the issue of euphonic combination (Sandhi) where the last sound of a word often coalesces with the initial sound of the following word. Thus the statement *maydeyam* could be rendered as *may deyam* (if we add a space between the two words: "By me it should be given") or as *maydeyam* (= *may adeyam*: "By me it should not be given"), with the coalescing of the final and the initial *a* into . The plea would thus become ambiguous.

92. This verse has been subject to multiple explanations: see Kane 1933, 151. The term *tmarasa* is not a common Sanskrit word for a lotus. The statement also expresses its meaning in a roundabout or evasive way, because the response is presented as a question. This method is called *vakrokti*, a well-known figure of speech in Sanskrit aesthetic theory.

93. As pointed out in note 91, here also the confusion is created by the way Sanskrit is written in manuscripts and by Sandhi. Here the phrases *saddeya* (always to be given or not given) and *maydeya* (to be given or not given by me) could be interpreted positively or negatively.

94. For the four feet of a lawsuit, see above, p. 000. When there is a plea of admission, then the court proceedings come to an end after the second foot, that is, the plea.

95. This is an elliptical sentence. Vijnanesvara (above p. 000) completes it: "it becomes combined."

96. For the use of these strategies with political science, see ch. 11, n. 47.

97. This verse has been subject to different interpretations. Vacaspati Misra in his *VyaC* cites it twice (158, 182; see Rocher's note to 158) and gives two different interpretations. The second broadly agrees with the one given here. But in the first he gives quite a different interpretation, which, I think, is more plausible. According to this, the defendant first enters a special plea giving one reason, and later produces a stronger reason. It is the latter that he must prove.

98. The reference here is to an inquiry about a case of arson. See above, n. 40.

99. For the meaning, see ch. 13, n. 25.

100. The Sanskrit technical terms are *krya* (case or charge) and *kriy* (evidence).

101. Gharpure's edition omits the term *bhuktita* (than enjoyment); the *DhKo* (I: 218) follows that reading. I think Srinivasacharya's reading *ato bhuktito bahuviayatvam* is correct; the ending "to" of *ato* and *bhiktito* may have created a haplography.

102. Devanna Bhatta devotes a very long section of his work to documents, to which he refers the reader: *SmC* III: 125–52.

103. For the meaning of ancient texts, see above, n. 77.

104. For these three kinds of plea in *KtSm* 169, see the section on Plea (p. 301). The argument attributed to

“some” is actually made by Vijnanesvara above in his comments on *YDh* 2.20 (p. 258), where he cites this very verse of Katyayana.

105. I follow here Gharpure’s reading, *avieea*. Srinivasacharya’s reading, *api eea*, is probably a typographical mistake.

106. The intent is to show that this is not an actual injunction. For the classification of various statements, such as explanatory statements, see ch. 7, n. 30.

107. The commentary referred to here is that of Medhatithi: *adharmajñagrahac ca lign nicitachalaviayo ’ya daa ity uktam*—“What is stated is that, because of the use of ‘proficient in adharma,’ by inference, this fine pertains to a person whose subterfuge has been demonstrated.” While Medhatithi focuses on the evil disposition of the litigants, Devanna Bhatta, using the term *udvtta*, appears to allude to their pride and haughtiness, unless he is using this term as an equivalent of *chala*. It is also worth noting that the compound *adharmajña* is interpreted by both as “knowing adharma” rather than “not knowing dharma.” So the litigants are not simply ignorant; they actually know illegal ways of dong things. These two kinds of negations correspond to the two types found in Indian, especially Buddhist, philosophy: *prasajyapratiedha* and *paryudsa*.

108. On the contrary, he is fined the statutory double the amount.

109. The whole verse reads: “When a Kshatriya, a Vaishya, or a Shudra is unable to pay a fine, he should acquit himself of the debt through work; a Brahman, on the other hand, should pay it off in installments.”

110. Medhatithi’s commentary on *MDh* 8.51 reads: *anyatra daama bhga vakyati | yas tu tvaddtum aakta so ’lpam api daamd bhgd dpayitavya* || “Elsewhere he will state one-tenth portion. However, a man who is unable to give that much should be forced to give an amount less than one-tenth portion.”

111. This is a lawsuit where the defendant pleads guilty and acknowledges the veracity of the plaint. For the two feet, see above p. 316.

112. I have not been able to find the citation or the comments in the printed edition of Visvarupa’s commentary.

113. The term *vyavahra* used in this verse has a double meaning: a legal transaction (which is probably the original meaning in Narada) and a lawsuit. Devanna Bhatta appears to take the term here with the second meaning.

114. For the various venues where lawsuits can be heard, see above, pp. 379f.

115. See above, ch. 13.2: #3 (pp. 379f).

Glossary

accusation	*abhipa, abhiyoga*
accuse	*abhi yuj*
accused	*abhiyukta*
accuser, plaintiff	*abhiyokt, abhiyogin*
act	*artha, padrtha*
actor	*ragvatrin*
adjudicator	*niret, prvivka*
admission	*sapratipatti*
age	*yuga*
alternate (for defendant or plaintiff)	*prativdin*
ancestry	*sapia*
anticipate	*kk*
aphoristic ritual texts	*kalpastra*
aphoristic texts on dharma	*dharmastra*
aphoristic texts on the domestic ritual	*ghyastra*
aphoristic texts on the Vedic ritual	*rautastra*
appointed official	*niyukta*
Arya land	*ryvarta*
assessor	*sabhya*
assistant	*purua*
association	*pga*
assumption	*kalpan*
authoritative treatise	*stra*
authority	*kaka*
bailiff	*sdhyapla*
band	*vrta*
basis	*mla*
Buddhist shrine	*caitya*
burden of proof	*kriy, pratykalita*
bylaw	*sthiti*
canon	*sasthna*
case	*vivda*
caste	*jti*
charge	*sdhya*
circumstantial inference	*arthpatti*
claimant	*prvvedaka*
cognition	*vijñna*
company	*gaa*
complaint	*artha, padrtha*
conduct	*la*
conflict	*virodha*

convention	*vyavahra*
coparcener	*rikthin*
counteraccusation	*pratyabhigoya*
countersue	*pratyabhi yuj*
court	*sabh*
court official	*sabhsad*
creditor	*dhanin*
cultured elite	*ia*
custom	*caritra*
debt	*a*
debtor	*in*
decree	*sana*
defendant	*prativdin, pratyarthin, vdin*
denial	*nihnava, mithy*
disagreement	*vipratipatti*
discounted	*adharbhta*
dispute	*vivda*
Eighth-Day rite	*aak*
eligibility	*adhikra*
enforcement (in lawsuit)	*prayojana*
enjoined act	*padrtha*
enjoyment	*bhukti, upabhoga*
epistemic source	*prama*
established by implication	*arthasiddha*
evidence	*kraa, kriy, prama*
expedient	*upya*
expert	*abhiyukta*
expiation	*pryacitta*
explanatory statement	*arthavda*
extinct (Veda)	*utsanna*
felicity	*abhyudaya*
filing charges	*vedana, vedya*
fine	*vinaya*
fixed practice of a region	*deasthiti*
foundation	*mla*
good conduct	*cra*
guild	*rei*
holy water (as ordeal)	*koa*
honesty	*uddhi, viuddhi*
illustration, illustrative	*pradarana*
implicit reference	*upalakaa*
impossibility	*anupapatti*
indicative sign	*liga*
inferred Vedic text	*anumitaruti*
inheritance	*riktha*
injunction	*vidhi*
innocence	*uddhi, viuddhi*
instituted	*pravartita*
integrity	*uddhi, viuddhi*

invalidation	*bdhita, bdha*
invariable concomitance	*vypti*
judge	*prvivka*
judicial proceeding	*vyavahra*
justice (official presiding)	*dharmastha*
lawsuit	*krya, vyavahra*
legal assembly	*pariad*
legal detention	*sedha*
legal dispute	*vivda*
legal paper	*craka*
legal procedure	*vyavahra*
legal transaction	*vyavahra*
lineage	*gotra*
logical impossibility	*anupapatti*
lost (Veda)	*utsanna*
means of proof	*prama, sdhana*
metarule	*paribh*
modes of proof	*prama*
norm	*vyavasth*
normative practice	*cra*
oath	*apatha*
one who has lost the case	*hnavdin*
open deposit	*upanikepa*
open deposit	*nikepa*
option	*vikalpa*
ordeal	*divya*
order of life	*rama*
originative rule	*utpatti (vidhi)*
outsider	*bhya*
overseer	*adhyaka*
perceived purpose	*drtha*
perceptible Vedic text	*pratyakaveda, pratyakaruti*
performance	*prayoga*
plaint	*bh, paka, pratijñ, prvapaka*
plaintiff	*abhiyogin, abhiyokt, arthin, prvapaka, prvavdin, prvvedaka, vdin, vivdrthin*
plea	*uttara, paka*
pleader, one who presents the plea	*uttaravdin*
pledge	*dhi*
political science	*arthastra* (as science/tradition)
positive concomitance	*anvaya*
possession	*upabhog*
practice	*acra*
presiding offer	*sabhpati*
prior judgment	*prvanyya, prnyya*
procedure	*pracra*
proceed with the case	*vivdayet*
proof	*kraa, bhvan*

prosperity	*reyas*
proven	*bhvita, vibhvita*
public sinner	*abhiasta*
reasons for forbearance	*kamligni*
receipt	*upagata*
recollection	*smti*
reflection (as part of the lawsuit)	*parmara*
region	*dea*
reiterate	*anu vad*
reporting, filing charge	*vedana*
respondent	*pratirodhin*
root	*mla*
science of dharma	*dharmastra* (as science/tradition)
scope	*viaya*
scriptural text	*stra*
scriptures	*gama, mnya*
scriptures	*ruti*
sealed deposit	*upanidhi*
side (in a lawsuit)	*paka*
social class	*vara*
special plea	*kraa, pratyavaskandana*
specious plaint	*pakbhsa*
stake, with a	*sapaa, sottara*
subject of litigation	*vyavahrapada*
subject to fine/punishment	*vineya*
subsidiary portion	*ea*
substitute	*pratinidhi*
subterfuge	*chala*
sue	*abhi yuj*
sued	*abhiyukta*
suit	*abhiyoga, artha, padrtha*
superseded	*adharbhta, dharya*
swear in as witness	*ru* (casusative) *rvayati*
syllable	*vara*
synechdoche	*upalakaa*
syntactical split	*vkyabheda*
texts of recollection	*smti*
those outside the Veda	*bhya*
title (to property)	*gama*
traditional text	*gama*
transgression	*vyatikrama*
treatise on dharma	*dharmastra* (as text)
treatise on politics	*arthastra* (as text)
unperceived purpose	*adrtha*
unseen effect	*aprva*
unsubstantiated	*asra*
Vedic branch	*kh*
Vedic exegesis	*mms*
Vedic scholar	*rotriya*

Vedic statement	*ruti*
victory document	*jayapatra*
vile litigator	*hnavdin*
violence	*shasa*
(with) visible results	*sdika (phala)*
watering place	*prap*
what is to be demonstrated	*sdhya*
without tangible motives	*aghyamakraa*
world age	*yuga*

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